

THE
ARRAIGNMENT,
TRYAL
AND
CONDEMNATION
OF
ALGERNON SIDNEY, Esq;
FOR
HIGH-TREASON.

For Conspiring the Death of the

K I N G,

And intending to raise a

R E B E L L I O N

In this

K I N G D O M.

Before the Right Honourable

ST GEORGE JEFFREYS, Knight and Baronet, Lord Chief
Justice of *England*, at His Majesties Court of *Kings-Bench* at
Westminster, on the 7th. 21th. and 27th. of November, 1683.

D U B L I N,

Reprinted by, and for, Jo. RAY at *Colledg-green*, and are to be
sold by the Booksellers in *Dublin*, 1684.

THE
ARRAIGNMENT
TRIAL
AND
CONDEMNATION

OF
ALGERNON SIDNEY, Esq;

FOR
HIGH-TREASON.

For Conspiring the Death of the

KING

And intending to raise a

REBELLION

In this

KINGDOM.

Before the Right Honourable

Sir GEORGE JEFFREYS, Knight and Baronet, Lord Chief
Justice of England, at His Majesty's Court of King's-Bench at
Westminster, on the 21st. and 22nd. of November, 1683.

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THE
ARRAIGNMENT, TRYAL & CONDEMNATION
OF
ALGERNON SIDNEY, Esq;
FOR
HIGH-TREASON.



For Conspiring the Death of the
K I N G,

And intending to raise a Rebellion in this Kingdom. Before the
Right Honourable Sir GEORGE JEFFREYS, Knight and Ba-
ronet, Lord Chief Justice of England, at His Majesties Court of
Kings Bench at Westminster, on the 7th. 21th. and 27th. of Novem-
ber, 1683.

The Arraignment of Algernon Sidney, Esq; November 7. 1683.

Algernon Sidney Esquire, was by Habeas Corpus brought up to the Bar of the
Court of Kings Bench, and the Clerk of the Crown having read the Return,
Mr. Attorney General informed the Court, there was an Indictment against
the Prisoner, and prayed he might be charged with it.

Clerk of the Crown. Algernon Sidney hold up thy hand (which he did.)

Midd. ff. **T**He Jurors for our Lord the King, upon their Oath do present, That Alger-
non Sidney, late of the Parish of St. Martin in the Fields, in the County
of Middlesex, Esq; as a false Traitor against the Most Illustrious, Most excellent Prince,
our Lord Charles the Second, by the Grace of God, King of England, Scotland, France
and Ireland, and his natural Lord, not having the Fear of God in his Heart, nor weighing
the Duty of his Allegiance; but moved and seduced by the instigation of the Devil, utterly
withdrawing the cordial Love, and true, due and natural Obedience, which a true and
faithful Subject of our said Lord the King should bear, towards him the said Lord the King,
and of right is bound to bear; contriving, and with all his strength intending, to disturb
the Peace and common Tranquility of this Kingdom of England, and to stir up and move
War and Rebellion against the said Lord the King, and to subvert the Government of the
said Lord the King, in this Kingdom of England, and to depose & deprive the said Lord the
King, from the Title, Honor and Regal Name of the Imperial Crown of his Kingdom of Eng-
land, and to bring and put the said Lord the King to Death and final Destruction, the 30th
day of June, in the 35th Year of the Reign of our Lord King Charles the Second, now King
of England, &c. and divers other dates and times, as well before as after, at the Parish of
Saint Giles in the Fields, in the County of Middlesex, maliciously and traitorously, with
divers

The Arraignment of

divers other Traitors to the Furors aforesaid unknown, did conspire, compass, imagine and intend to deprive and cast down the said Lord the King, his supreme natural Lord: not only from the Regal State, Title, Power and Rule of his Kingdom of England: but also to kill and bring and put to death the same Lord the King, and to change, alter and utterly subvert the antient Government of this his Kingdom of England, and to cause and procure a miserable Slaughter among the Subjects of the said Lord the King throug his whole Kingdom of England, and to move and stir up an Insurrection and Rebellion against the said Lord the King, within this Kingdom of England. And, to fulfil and perfect those his most horrid, wicked and diabolical Treasons, and traiterous compassings, imaginations and purposes, the same Algernon Sidney, as a false Traitor, then and there, and divers other daies and times, as well before as after, maliciously, traiterously and advisedly did assemble himself, meet and consult with the aforesaid other Traitors to the Furors aforesaid unknown, and with the same Traitors did treat of, and for those his Treasons and traiterous compassings, imaginations and purposes, to be executed and fulfilled. And that the aforesaid Algernon Sidney, as a false Traytor, maliciously, traiterously and advisedly, then and there, and divers other daies and times, as well before as after, upon himself did assume, and to the aforesaid other Traitors did promise, That he would be aiding and assisting in the Execution of their Treasons and traiterous compassings, imaginations and purposes aforesaid, and to fulfil, perfect and reduce to effect those their most horrid Treasons and traiterous compassings, imaginations and purposes aforesaid, the same Algernon Sidney, as a false Traitor, then and there falsly, maliciously, advisedly and traiterously did send one Aaron Smith into Scotland, to invite, procure and incite divers evil disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of England, to advise and consult with the aforesaid Algernon Sidney, and the aforesaid other unknown Traitors in this Kingdom of England, of Aid and Assistance to be expected and supplied from the Kingdom of Scotland, to fulfil, perfect and reduce to effect those their most wicked, horrid and traiterous Treasons aforesaid. And that the aforesaid Algernon Sidney, to fulfil and perfect those most wicked, horrid and devilish Treasons, and traiterous compassings, imaginations and purposes aforesaid, and to persuade the Subjects of the said Lord the King of this Kingdom of England, That it is lawful to make and stir up an Insurrection and Rebellion against the said Lord the King that now is, the said 30th of June, in the 35th Year of the Reign of the said Lord the King that now is, at the Parish of St. Giles in the Fields, in the County of Middlesex, falsly, unlawfully, wickedly, seditiously and traiterously did make, compose and write, and caused to be made, composed and written a certain, false, seditious and traiterous Libel, in which said false seditious and traiterous Libel among other things is contained, as followeth, in these English words, viz. The Power originally in the People of England is deligated unto the Parliament, He (the most Serene Lord, Charles the Second now King of England, meaning) is subject unto the Law of God, as He is a Man to the People, that makes him a King, inasmuch as he is a King, the Law sets a Measure unto that Subjection, and the Parliament Judges of the particular Cases thereupon arising, He must be content to submit his Interest unto theirs, since He is no more than any one of them, in any other respect than that He is by the consent of all, raised above any other; if He doth not like this Condition, He may renounce the Crown; but if He receive it upon that Condition (as all Magistrates do the Power they receive) and swear to perform it, He must expect that the Performance will be exacted, or Revenge taken by those that He hath betrayed. And that in another place in the said false, seditious and traiterous Libel, among other things, these false, seditious and traiterous English Sentences are contained, (that is to say) We may therefore change or take away Kings, without breaking any Yoke, or that is made a Yoke which ought not to be one, the Injury is therefore in making or imposing, and there can be none in breaking it: Against the Duty of his Allegiance, against the Peace of the said now Lord the King, his Crown and Dignity, &c. and against the Form of the Statutes in this Case made and provided, &c.

How

How sayst thou art thou Guilty of this High Treason whereof thou standest Indicted, or not Guilty?

Col. Sidney. My Lord, I find here an heap of Crimes put together distinct in nature one from another, and distinguished by Law, and I do conceive, my Lord, That this Indictment it self is thereupon void, and I cannot be Impeached upon it.

Lord Chief Justice. We are not to admit of any Discourses till you Answer the Question. Whether you be Guilty or not Guilty?

Mr. Att. Gen. He will Demur, my Lord, we will give him leave.

Col. Sidney. I presume your Lordship will direct me, for I am an Ignorant Man in matters of this kind, I may easily be surpris'd in it, I never was at a Tryal in my life of any body, and never read a Law Book.

L. C. J. Because no Prisoner under your circumstances is to have Counsel, but in special Cases to be assigned in matters of Law, the Court is bound by their Oaths and Duty of their Places, that they shall not see any wrong done to you: But the business we are to tell you now is You are to plead Guilty or not Guilty, or demur, which is a Confession in point of Law.

Col. Sidney. Under favour, my Lord. There may be Indictments that are erroneous, and if they are erroneous and vitious they are null, and ought not to be answered to.

Mr. Just. Wythins. If you please to demur to it, you shall have liberty to make any Exceptions.

Col. Sidney. I don't demur, 'tis only Exceptions. I think in matters of Life, a Man may give in his Exceptions to the Bill, and plead not Guilty afterwards. I am sure in Sir Henry Vane's Case, the Court said it, and offered him to do it; That which, under favour, I hope to do.

L. C. J. You must Plead or Demur.

Col. Sidney. My Lord, If I put in Exceptions to the Bill, I don't plead till those Exceptions are over-ruled. This was in the Case of Sir Henry Vane.

L. C. J. Sir, I must tell you, you must either Plead or Demur.

Col. Sidney. My Lord, There are in this Indictment, some Treasons or reputed Treasons, that may come within the Statute of the 13th of this King, which is limited by time, the Prosecution must be in six Months, and the Indictment within three. Now, my Lord, if that this business that is mentioned, be above six Months before my Commitment, or above three before the Indictment, I think, under favour, I ought not to answer to these Matters.

L. C. J. You are mistaken in the Law. That will be saved when the Fact comes to appear. If they alledge the thing to be at a time, which according to that allegation would maintain the Indictment, if upon the Tryal it appear otherwise, the Court is bound to take notice of it when you come to your Tryal, but we are not bound to examin that before you have pleaded.

Col. Sidney. My Lord, Every body will acknowledge that there have been or may be vitious Indictments. Now if I plead to an erroneous Indictment, and am acquitted, I may be Indicted again. Bills of Attainder have been upon Errors in Original Indictments, as that of the Duke of Somerset. Now if there be here several things distinct in Nature, distinguished by Law that are put together, 'tis impossible to make a positive Answer to any one. If any one should tell me, that I by myself, or by others, by Sword or by Pistol conspired to kill the King, I can say I did it, or I did it not. If any one say I have levyed War, and by several Acts undertake to prove I have done it, I can say I have done it, or I have not. But here I don't find any thing specified, or can tell upon what Statute I am Indicted. I pray I may see the Record.

L. C. J. That we can't do. You shall hear it read again if you will. If you think it to be a void Indictment, Demur to it if you will.

Col. Sidney. My Lord, I desire you to accept of this, (shewing a Parchment.)

L. C. J.

L. C. J. What is it? Put in what Plea you shall be advised; but if you put in a special Plea, and Mr. Attorney demurs, you may have Judgment of Death, and by that you waive the Fact.

Col. Sidney. I can't make any Objection to the Bill after I have pleaded, Not Guilty, for I accept the Bill thereby to be good.

L. C. J. If you can assign any matter of Law, do. But otherwise what a kind of thing would it be. All Criminals would say in all Cases, I doubt whether the Bill be good or bad, and after I have thus considered of it, I will plead. You are misinformed, and this the Court tells you, as a Duty incumbent on them.

Mr. Just. Wythins. If you demur, and shew what your Causes are, we will assign you Counsel.

Col. Sidney. I desire you would not try me, and make me to run on dark and slippery places, I don't see my way.

L. C. J. Don't apprehend your self to be so, as if the Court would run you on any inconvenience. But they are bound to see the methods of Justice preserved, they are those that you and all the Kings Subjects are bound to conform to. If any one of us were in the same condition, we must observe the same methods of Law.

Clerk of the Crown. Art thou Guilty, or not Guilty?

Col. Sidney. Then pray, my Lord, will you tell me this, Is it true, that a man how vitious soever an Indictment is, must Answer or Demurr to it.

L. C. J. He must either Answer or Demurr.

Col. Sidney. Are there no Exceptions to be admitted?

L. C. J. None, and if you don't do the one, or the other, Judgment passes, as if you had pleaded.

Col. Sidney. This is a Plea.

Mr. J. Wythins. Will you stand by it, Consider your self, and your life, If you put in that Plea, and Mr. Attorney Demurs, if your Plea be not good, your Life is gone.

Col. Sidney. Pray my Lord, give me a day to consider of it.

L. C. J. No, we must not introduce new Methods, or Forms for any body. The same Case that is with you, may be with other people.

Col. Sidney. My Lord, I do not pretend to any thing but what is Law, and due to every man upon English ground. I would be very sorry to do that which may be hurtful.

L. C. J. You have the Rule of the Court. You must do one or the other. Call him to it.

Col. Sidney. I desire this may be read (shewing the same Parchment.)

L. C. J. It shall not be read unless you put it in as a Plea.

Mr. At. Gen. I must do my duty, Mr. Williams exceeds his liberty, he informs the Prisoner several things.

Mr. Williams. I only said, if it was a Plea, put it in; Mr. Attorney can hear all I say. Whereupon Mr. Williams was reproved by the Lord Chief Justice.

Col. Sidney. I only give it as Exceptions to the Bill.

Clerk of the Crown. Art thou Guilty, or not Guilty?

Col. Sidney. If any one should ask me any particular thing, I could tell how to answer.

L. C. J. He asks you a particular thing. It is the duty of the Court to pronounce Judgment, if you do not plead.

Col. Sidney. Why then if you drive me upon it, I must plead.

L. C. J. I am sure there is no Gentleman of the Long Robe would put any such thing into your head. There was never any such thing done in in Capital Matters.

Col. Sidney. My Lord, I am there Indicted for Conspiring the Death of the King, I have not Conspired the Death of the King, I am there Indicted for Levying of War, I have not done that. I am Indicted for having Invited in others of another Nation, I have not done that neither. I am there Indicted to have written a Seditious Libel

to stir up the Spirits of the People against the King, I have not written any thing to stir up the People against the King.

L. C. J. We are not to hear all this, you must Plead as other people, or else in plain *English* we will pronounce Sentence. We ought to give all men satisfaction that will be satisfied; but if they will not be directed, we can't help it.

Col. Sidney. My Lord, If you put me upon this inevitable necessity, it lyes upon you; I must plead then.

Clerk of the Crown. Art thou Guilty, or not Guilty?

Col. Sidney. Not Guilty.

Clerk of the Crown. Culprit, how wilt thou be tryed?

Col. Sidney. By God and my Country.

Clerk of the Crown. God send thee a good Deliverance.

L. C. J. If you be not Guilty, I pray God you may escape.

Mr. Att. Gen. My Lord, will you please to appoint a day for his Tryal, that he may take notice of it now?

L. C. J. What time would you have?

Mr. Att. Gen. A Weeks time, do you think that will be enough?

Col. Sidney. No, Pray my Lord give me a Fortnights time.

Mr. Att. Gen. I won't oppose it.

Col. Sidney. In the next place I desire a Copy of the Indictment.

L. C. J. We can't grant it by Law.

Col. Sidney. I desire you would please to give me Counsel.

L. C. J. We cannot do it. If you assign us any particular Point of Law, if the Court think it such a Point as may be worth the debating, you shall have Counsel. But if you ask for Counsel for no other reason then because you ask it, we must not grant it. The Court is bound to see that nothing be done against you, but what is according to the Rules of Law. I would be very loth to draw the guilt of any mans blood upon me.

Col. Sidney. Has not every Body Counsel?

L. C. J. No.

Col. Sidney. I have several Points of Law.

L. C. J. Tell us them.

Col. Sidney. My Lord, will you oblige me that am an ignorant man, and confess my self so; upon hearing my Indictment for things I know not of, a long thing presently to raise a Point of Law.

L. C. J. 'Tis not we oblige you *Mr. Sidney*, it is the Law obliges you. We are the Ministers of the Law, it is the Law says we are not to allow you Counsel without making your Objections, that the Court may understand whether it be fit; 'Tis the Law says we may not allow you a Copy of the Indictment. Therefore do not go away and say that we as men sitting here impose upon you, we sit here only to administer the Justice of the Nation.

Mr. J. Wythens. Sir you will have a Fortnights time to consider of Objections in Law.

L. C. J. If you will have it read, you shall. Those things that you may have by Law, God forbid but you should have the benefit of them.

Col. Sidney. I desire, my Lord, to hear it read again.

Mr. At. Gen. Would you have it read in Latine.

Col. Sidney. Yes, if you please, I do understand a little Latine

Then the Indictment was read in Latine.

Col. Sidney. What is that Statute?

L. C. J. When you come to your Tryal, *Mr. Attorney* will tell you what Statute he goes upon. And he may give in Evidence, any Act of Parliament that comprehends Treason.

Col. Sidney. My thinks he should say what Statute he goes upon.

Mr. Just. Watkins. Sir, would you have a new Indictment for you?

L. C. J. He must take notice of his Tryal this day fortnight. Lieutenant of the Tower, you may take the Prisoner back again.

(Then the Lieutenant of the Tower took away his Prisoner.)

The TRYAL of ALGERNON SIDNEY, Esquire,
November 21. 1683.

Algernon Sidney, Esquire, was brought to the Bar of the Court of Kings Bench by Habeas Corpus, and Proclamation for Information being made, he desired Pen, Ink and Paper, which were granted him. And he also desired, that two persons (*viz.*) Mr. Wynn and Mr. Gibbs might write for him, which was also allowed by the Court.

Col. Sidney. My Lord, when I was last here before your Lordship, I did desire a Copy of my Indictment, and I thought the Law did allow it me: But being in an hurry, carried first to a Tavern, then led through Soldiers, and surprized absolutely, I could not give that Reason why I thought the Law allowed me a Copy. My Lord, I was denied a Copy, and thereby I was deprived of the benefit of a special Plea I designed to have put in. This would have been a great help to your Lordship, and to me; the denial of which hath been a great prejudice. Now, my Lord, that which I thought was Law then, I think I can give a better Testimony that 'tis so now upon the Statute of 46. E. 3. wherein 'tis expressed, that *tout parties & tout gents*, that is, all people shall have a Copy of every Record; and it enumerates several matters, as well that against the King as other people. This is a general Law still in force: my Lord Stafford had a Copy, and my Lord Stafford and the Lords in the Tower had Copies of their Indictments. And under favour; I think it was never more necessary than to me, there never having been, perhaps, a Charge so long and so confused. Now, my Lord, I have a Copy transcribed of this Statute. (*Shewing a Paper.*)

L. C. J. We remember the Law very well. Mr. Sidney did move for a Copy of the Indictment, and the Court denied him then, and so shall now: and yet all this while we shall deny you nothing that is Law. You shall have the right that becomes a Subject in your condition. And we must tell you, that notwithstanding all that Case, we ought not to have given you so much favour (perhaps in strictness) as we did. And because you did particularly take notice of the Case of Sir Henry Vane last time, I will shew you the Court did indulge more to you than was done to that person. In Sir Henry Vane's Case, by the Opinion of all the Judges, it was declared, that no Copy ought to be given, neither of the whole, nor any part of the Indictment, except they shew matter of Law. But your Counsel, since you went away, moved for the Copy of the Indictment; and to satisfy them, I directed the Case that you took notice of to be read in the Court. And I thought they had been sufficiently satisfied. You had the Indictment read to you in *Latin*, which was denied in the Case of Sir Henry Vane. And there is a later Case known to most persons here. By the opinion of all the Judges of England, a Copy of the Indictment was denied to my Lord Russell. Therefore arraign him upon the Indictment; we must not spend our time in Discourses to captivate the people.

Col. Sidney. Is not this a good Law, my Lord? (*Holding out the Paper.*)

L. C. J. You have the Rule of the Court.

Mr. Just. Wythens. Any thing the Law will allow you, you shall have; but I am sure, if you did advise with your Counsel, they must tell you the same thing.

So the Clerk of the Crown called the Jury, and after several challenges, the names of the Jury were as follow.

The Jury, John Anger, Adam Andrews, Nicholas Baxter,
Richard White, Emery Arguise, William Reeves,
William Linn, Josiah Clarke, William Grove and
Lawrence Weed, George Glisby, John Burr.

L. C. J.

L. C. J. Look you, Gentlemen of the Jurie, there are some Gentlemen at the Bar, as we are informed, are apt to whisper to the Jurie; 'tis no part of their duty; nay, 'tis against their duty: and therefore, Gentlemen, if you hear any of them by you, that offer to whisper, or make Comments in this Cause, as you are upon your Oaths, and I doubt not but will do your duty between the King and the Prisoner; so I expect if you hear the Counsel say any thing, you will inform the Court. Let us have no Remarks, but a fair Trial in Gods Name.

Cl. of Cr. You that are sworn look upon the Prisoner, and hearken to his Cause. He stands indicted by the name of *Algernon Sidney* of, &c. (as in the Indictment) your charge is to inquire, &c.

Then Proclamation for Evidence was made.

Mr. Dolben. May it please your Lordship, and you Gentlemen that are sworn. This is an Indictment of High Treason preferred against *Algernon Sidney*, the Prisoner at the Bar. The Indictment sets forth, that he as a false Traitor against our most Illustrious Prince *Charles* the Second, his natural Lord, not having the fear of God in his heart, &c. On the Thirtieth of *June* in the Thirty Fifth Year of the King, and divers other days and times, as well before as after, in the Parish of *St. Giles in the Fields* in the County of *Middlesex*, traiterously with divers other Traitors unknown, did conspire the Death of the King, and to levy War within this Kingdom. And to compleat these traiterous Purposes, did then and there maliciously advisedly and traiterously send one *Aaron Smith* into *Scotland*, to excite some ill disposed persons of that Kingdom to come into this, and to consult with the said *Algernon Sidney* and other Traitors, of and upon assistance from the Kingdom of *Scotland*, to carry on those Designs. And the Indictment sets forth further, that to perswade the People of *England* it was lawful to raise Rebellion, the said *Algernon Sidney* did cause to be written a false Seditious Libel, in which is contained these English Words, *The Power originally in the People of England, is delegated unto the Parliament. The King is subject to the Law of God as he is a man to the people that makes him a King. In as much as he is a King, the Law sets a measure unto that Subjection, &c.* (as in the Indictment.) This is laid to be against the duty of his Allegiance, against the peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. If we prove him guilty, we doubt not but you will find it.

Mr. Att. Gen. My Lord, and you Gentlemen of the Jurie, the Prisoner at the Bar stands indicted of the hiest crimes, the conspiring the Death of the King, and the overthrow of the English Monarchy. Gentlemen, we shall use this method in our Evidence. We shall shew by many Witnesses, that there was a design of raising and making a Rebellion within this Kingdom. For, Gentlemen, you must take notice, and I think there is no English man but does believe, that for several Years last past a design was laid, and for that purpose several secret insinuations were made use of, and publick Libels spread abroad to persuade the people that the King was introducing Arbitrary Power, that he subverted all their Rights, Liberties, Properties, and whatever was dear to them. They endeavoured to make the world believe the King was a Papist. And when, Gentlemen, by such stratagems they had worked upon many incauteous persons, when they thought they had gotten a sufficient party, then there was a design of an open Rising (for they thought all things were ripened) and that was to be in several parts of the Kingdom. Some persons to effect this design were for a present Assassination of the King. Others would do it in a more fair and gentle way. They thought it below persons of that great Quality as the Prisoner is, and therefore were for doing it by open Force.

When we have given that general Evidence, we shall then come to shew you what share and part the Prisoner had in this Design. For certainly he was looked upon as

a very eminent Person, whose Education abroad, and former practices at home had rendered him fit to advise and proceed in such Affairs. We shall prove when these matters were ripe; this Gentleman was of the Council of State, of the Six that were to manage this matter of the Rising. We shall shew the several Consultations they held: one at Mr. *Hambden's* House, another at the House of my Lord *Russel*. There we shall acquaint you what Debates they had; for they acted like very subtil Men; and there they debated, whether the Rising should be first in the Country or City, or both together. They came to a resolution it should be in both places at once. Then when they had asserted that point, they come to consider the time of Rising; and upon that they thought fit to call in Aid of *Scotland* first; and that was this Gentleman's particular Province. For he being a man of great Secresie, was to send an Emiffary into that Kingdom, and invite some Persons over to treat with them about it. We shall prove that an Emiffary was sent, and this Gentleman gave him a considerable sum to bear his charges. We shall prove that several Scotch Gentleman, in pursuance of this Resolve, came here to treat with this great Council of State, about this Affair: And shall make it appear to you, that as soon as ever the least discovery of this Plot was, these Persons concealed themselves and withdrew, as the rest of the Plotters that have fled from Justice.

Gentlemen, this was not enough for this Gentleman to consult on these several Passages, but to demonstrate to the World, that his Head and Heart was intire in this Service, and that he might carry it on the more effectually, he was at this very time when this Emiffary was gone into *Scotland*, preparing a most seditious and traitorous Libel, we instance in some particular words of it. But we shall shew you, that the whole design of this Treatise is to persuade the People of *England*, that it is lawful, nay, that they have a right to set aside their Prince, in case it appear to them, that he hath broken the Trust laid upon him by the People. Gentlemen, he does use in that Treatise several Arguments drawn from the most Rebellious Times that ever were in *England*, from the late Rebellion (I must needs use that word notwithstanding the Act of Oblivion, when a Gentleman shall now attempt to do those things for which he was pardoned then) and from other Kingdoms, where Rebellion hath been prosperous against Princes. Then he falls to reasoning, and uses great reason in the case, That all the power of the Prince is originally in the People, and applies that discourse, that the power of the King was derived from the People upon Trust, and they had already declared the King had invaded their Rights, and therefore he comes to argue, they might assume that original Power they had conferred. And he tells the King, that is no hard condition, if he thinks it so, he should lay down his Crown, if not, he threatens the condition would be exacted, or otherwise should be revenged by those he had betrayed: and who but this Gentleman and his Confederates, that thought himself not only able to govern this Nation but many Monarchies, should call him to account for it? For he lays down this Principle, That though all the People do rise against their Prince, it is no Rebellion. The whole Book is an argument for the People to rise in Arms, and vindicate their wrongs. He lays it down, *That the King has no authority to dissolve the Parliament; but 'tis apparent the King hath dissolved many; therefore he hath broken his Trust, and invaded our Rights.* And at last concludes with that passage laid in the Indictment, *We may therefore shake off our Yoke; for 'tis not a Yoke we submitted to, but a Yoke by Tyranny (that must be the meaning of it) they have imposed on us.*

Gentlemen, if we prove all these matters to you, I doubt not but you will do right to the King and Kingdom, and shew your abhorrence of those Republican Principles; which, if put in practice, will not only destroy the King, but the best Monarchy in the World.

Mr. Sol. Gen. Pray call Mr. West. (Who appeared.)

Col. Sidney. I pray one word, my Lord, before Mr. West be sworn, I have heard, my Lord, Mr. West hath confessed many Treasons, and I desire to know whether he is pardoned or no.

L. C. J. I don't know that.

Col. Sidney. My Lord, how can he be a Witness then?

L. C. J. Swear him: for I know no legal objection against him. He was a good Witness in my Lord Russels Tryal.

Col. Sidney. My Lord, if another did not except against him, 'tis nothing to me.

Mr. North. Pray give an account to the Court of what you know of a general Insurrection intended in England.

Col. Sidney. What he knows concerning me.

L. C. J. We will take care of that, that no Evidence be given but what ought to be.

Col. Sidney. Is it ordinary that he should say any thing, unless it be to me and my Indictment?

L. C. J. Mr. Sidney, you remember in all the Tryals about the late Popish Plot, how there was first a general account given of the Plot in Coleman's Tryal, and so in Plunket's, and others: I don't doubt but you remember it. And Sir William Jones, against whose Judgment, I believe, you won't object, was Attorney General at that time.

Mr. North. Mr. West, what do you know of a general Insurrection lately designed?

Mr. West. My Lord, I have had the honor to know Collonel Sidney several years, but I don't remember that I ever saw him from the time I came acquainted with any part of the Conspiracy, till the Discovery that was at the Council.

Mr. North. Pray give an account of what you know of the Plot in general.

Mr. West. My Lord, in October last Captain Walcot came to me, and told me that my Lord Shaftsbury had designed an Insurrection in November; I used some Arguments to dissuade him from it. But a little afterwards he came and told me the thing was wholly disappointed, and then it went off, and my Lord Shaftsbury went for Holland. Collonel Romsey afterwards about Christmas said there were some Lords and Gentlemen intended to make an Insurrection, the persons were the Duke of Monmouth, my Lord of Essex, my Lord Howard, my Lord Russel, the Prisoner at the Bar, and Mr. Hambden Junior. After some time he told me they had altered their measures, and were resolved not to venture upon an Insurrection in England, till they had concurrence in Scotland. Afterwards I was not privy to any thing else, but what I had the report of from Mr. Nelthrop and Mr. Ferguson. Mr. Nelthrop told me the Prisoner had said

Col. Sidney. My Lord, I am very unwilling to interrupt the Gentleman

L. C. J. You must not interrupt the Witness. Go on, Sir.

Mr. West. Mr. Nelthrop told me, the Prisoner at the Bar had sent Aaron Smith into Scotland, and given him a sum of money to bear his Charges, and sent Letters to some Scotch Gentlemen to invite them to Town. The Letter bore a Cant of settling some business in Carolina; but the business was coming up about the Insurrection. After this Mr. Smith returned, and some Scotch Gentlemen with him; and soon after Mr. Ferguson gave an account of that Affair, and said, the Scotch proposed if they might have thirty thousand pounds in ready money, they would undertake to make an Insurrection in Scotland without the concurrence of England. He said this Proposal was agreed to, and money would be soon ready; and he said, that Sheppard would return the money. That the Arms were ready bought, and my Lord of Argyle would go into Scotland, and head the Scots. He told me when things were thus settled, some difference arose about raising the money; and at last he told me, my Lord Grey did offer to raise ten thousand pounds out of his own Estate, if the rest would pay their proportion. Then the Scots came down to less, but that would not be complied with. The places for the Rising were Bristol, Taunton, York, Chester, Exeter, London. That there had been some Debates whether they should

The Tryal of

should begin at *London*, or the other places; and it last at was resolved, they should begin at *London* with the rest of the places.

My Lord, this was the Account I had of the matter in general of Mr. *Ferguson*; but he said they were disappointed. Afterwards he told me the Prisoner at the Bar and Major *Wildman* were very instrumental in working of it off, because they could not agree upon the Declaration to be made upon the Insurrection. The English were for a Common-Wealth; but the Scotch Gentlemen answered, *Fairly it might come to it in time, but the Noblemen there would not agree to it at present.* As to the Prisoner in particular I know nothing, and did never speak with him till since the Discovery.

Mr. Att. Gen. Collonel *Romsey*.

Mr. North. Pray Sir, will you give the Court an account of what you know of any Insurrection intended, and how they designed to carry it on.

Col. *Romsey*. My Lord, the latter end of *October*, or beginning of *November*, I was desired by my Lord *Shaftsbury* to go to Mr. *Sheppards* to know of the Gentlemen that were met there, what was done about the Rising intended at *Taunton*; and I had their answer, that Mr. *Trenchard* had fail'd them, and that it must cease for that time. That was all at that time.

Mr. Sol. Gen. What else do you know of any Insurrection afterwards?

Col. *Romsey*. After that we had several meetings at Mr. *West's* Chamber, where we had divided the City into twenty parts, and seven parts Mr. *Goodenough* had brought an account of; the other thirteen he said nothing of; for he had not spoke with those that were to tell him how many men they would afford. There was there Captain *Walcot*, Mr. *West*, the two *Goodenoughs*, Mr. *Borne*, Mr. *Wade* and my self.

L. C. J. What was the Result of those Debates?

Col. *Romsey*. To see what number of men they could produce in the City for the Insurrection.

L. C. J. Was there a Rising designed? Col. *Romsey*. Yes.

L. C. J. And did these people meet? Col. *Romsey*. There was no time set.

Mr. Sol. Gen. When was the meeting?

Col. *Romsey*. There were several meetings in *March*, and *April*, and *May*.

Mr. Sol. Gen. After the meeting at *Sheppards*?

Col. *Romsey*. Yes, a great while. It ceased, I think, six weeks, or three months.

L. C. J. Who did you meet with at Mr. *Sheppards*?

Col. *Romsey*. There was the Duke of *Monmouth*, my Lord *Gray*, my Lord *Russel*, Sir *Thomas Armstrong*, Mr. *Ferguson*, and Mr. *Sheppard*.

Mr. Sol. Gen. Who did you expect should head this Army?

Col. *Romsey*. That was never said any thing of.

Mr. Att. Gen. Who were to manage the Rising?

Col. *Romsey*. We that met there.

Mr. Att. Gen. Had you no expectation of great men?

Col. *Romsey*. Mr. *West* told me and Mr. *Goodenough*, that there was a Council, which were the Duke of *Monmouth*, my Lord *Essex*, my Lord *Howard*, Colonel *Sidney*, Mr. *Hambden*, and my Lord *Russel*, there was six.

L. C. J. What did he tell you of them six?

Col. *Romsey*. He told me they were managing a Business with *Scotland*.

L. C. J. A Business! pray speak plain, tell all you know.

Col. *Romsey*. For the Insurrection.

L. C. J. Say to them, we know nothing of the Business you were about.

Col. *Romsey*. My Lord, Mr. *West* had that discourse with my Lord *Howard*, and I never had; he is more fit to speak to than than me.

Speak your own knowledge, and no more.

Mr. *Jones*. After the death of my Lord *Shaftsbury*, who were the Managers, and were to carry it on?

Col.

Col. Romf. I told you, *Mr. West* and *Mr. Goodenough* did tell me, the Duke of *Monmouth*, my Lord *Essex*—

Mr. Att. Gen. He told you so before. Do you know there was an Insurrection then intended?

Col. Romf. Yes, because we met towards the management of it, the company that met at *Mr. West's* Chamber and other places.

Mr. Att. Gen. What discourse had you with *Mr. Ferguson* about it?

Col. Romf. Not about those Gentlemen.

Mr. North. The next thing we shall shew, shall be that the Scotch men came to Town.

Col. Sidney. My Lord, I must ever put you in mind, whether it be ordinary to examine men upon Indictments of Treason concerning me that I never saw nor heard of in my life.

L. C. J. I tell you, all this Evidence does not affect you, and I tell the Jury so.

Col. Sidney. But it prepossesses the Jury.

Mr. Keiling called and sworn.

Mr. Att. Gen. I ask you in general, what you know of the Rising to have been last Spring?

Mr. Keiling. My Lord, it was some time last Summer *Mr. Goodenough* came to me, and brought me three Papers numbred on the back-side; I asked him to what end he delivered them me? he told me, One was for my self, and I was to deliver the Two to whom I could trust in the two Divisions. I asked him, What was the Design? he said, To raise Men; says I, Do you design a general Insurrection? He said, if he did not, if the King was taken off this would do well; for then people would know how to have recourse to a formidable Body. And I have heard him say, That *Colonel Sidney*, whom I don't know, had a considerable part in the management of that affair.

Mr. Att. Gen. We charge him with Conspiring, and there must be Confederates in the Case. Now then we come to the Prisoner. We will call my Lord *Howard*, that was one of the persons that did consult.

My Lord Howard sworn.

Mr. Att. Gen. Pray acquaint my Lord and the Jury of your knowledge of what Transactions there have been with the Prisoner about this affair of the general Rising.

Lord Howard. Truly, my Lord, in the entring of the Evidence I am about to give, I cannot but observe what a natural uniformity there is in Truth. For the Gentlemen that have been before, have so exactly instanced, in every particular, with what I have to say, that two Tallies could not more exactly fall into one another, though, I confess, I had not seen their Faces, till the Plot brake out, for some months before.

My Lord, and Gentlemen of the Jury, about the middle of *January* last, it was considered by some of us that met together, That it was very necessary and expedient to an Enterprize that had been long in hand, and fallen flat then, that it should be revived by some Consult or Cabal that should be set up to give life to it, and Government to the motions of it. The first (for ought I know) movers of this, were the Duke of *Monmouth*, the Gentleman at the Bar, and my self: And there we did agree, That we should be Rink our selves of some few, we were willing it should not exceed Five, at the most Seven. This Agreement being at first between us Three; I remember the Duke of *Monmouth* undertook to ingage my Lord *Russel*, and my Lord *Salisbury*; and this Gentleman *Colonel Sidney* for my Lord of *Essex* and *Mr. Hambden*; and these being put together, did presently constitute a little Cabal of as great a Number as was intended. This being settled among them, it was within a few daies after, I can't certainly tell when; but between the middle and latter end of *January*, that

that I was told, That the persons had agreed to enter into this conjunction of Coun-
sels; and in order to that, they had appointed a Meeting at Mr. *Hambdens* House, to
which I was invited. This in time was between the middle and latter end of *Janu-*
ary, but I can't tell exactly. When we came there, there was all those Gentlemen I
before named, the Duke of *Monmouth*, my Lord *Essex*, my Lord *Russel*, Collonel *Sid-*
ney, Mr. *Hambden*, and my self. It was at Mr. *Hambdens* House, which ranges on
the same Row with *Southampton* House: And being met, Mr. *Hambden*, I suppose,
did think it most properly belonged to him, to take upon him the part as it were to
open the Sessions, that was to give us a little account of the Reason, End, and Inten-
tion of that Meeting: in which Discourse he took occasion to recapitulate some De-
sign, that had been before chiefly carried on by my Lord *Shaftsbury*, before this time
dead; and also took notice of the ready Disposition and Inclination of the Minds of
men to go on with it; and did give one instance of his Judgment of it, That it be-
ing a Design communicated to so many, it had not been so much as revealed, or a
murmur or a whisper gone about it: From whence he took occasion to tell us, That
it was absolutely necessary for the future, there should be some Counsel that should
be as a Spring a little to guide and govern the motions of the rest; for that there
were divers things to be taken care of, which if not taken care of by particular per-
sons, would all miscarry. This was the substance of the Prologue & Introduction he
made. From hence he made a Transition to some particular things that he thought
was most principally to be taken care of. And though it is impossible for me to
remember the Order and Method in which we discoursed, or who said this or that,
but that which the Sense of all resulted to was this: That since we did not come pre-
pared for it, we should consider what were the things that would hereafter challenge
our particular care, that was, the time when, the places where, and the persons by
whom these things should be carried on. This led into some particular discourse con-
cerning some of these Heads: For the Time, that it should be shortly, lest the Minds
of men should chill: and then to the Place where, whether in the City or Country,
or both jointly. In all these some Opinions were given, but not settled to any Resolu-
tion, but they were committed to our Thoughts to be digested afterwards. But these
being the things that every one was to take upon his thoughts, there was this prere-
quisite to the undertaking, and that was to consider what Magazines were to be got;
and that led to another particular, which was, with what they should be gotten, and
that was Money; and thereupon was propounded a considerable Sum to be raised;
and as I remember, the Sum propounded by the Duke of *Monmouth* was *twenty five*
thousand pounds, or *thirty thousand pounds*. And then it was considered, how it should
be raised without drawing Observation or Jealousie. These are only the Heads that
were then agreed on, hereafter to be better considered. But the present Resolution
that was taken was, That before any procedure was made in any of these things, or
any advance towards the Undertaking; the first thing to be considered was, how to
make a Coalition of Councils between *Scotland*, and what we were doing here; and
for that purpose we should bethink our selves of some fit person to be sent thither to
unite us into one Sense and Care. This is as much as occurs to my memory upon
that Meeting. About a fortnight or three weeks after, which I suppose carried it to
the middle of *February* next, we had another Meeting, and that was at *Southampton*
House at my Lord *Russels*, and there was every one of the same persons; and when
we came there, there happened to fall in a Discourse which I know not how it came
in, but it was a little warmly urged, and thought to be untimely and unseasonable;
and that I remember was by Mr. *Hambden*, who did tell us, That having now united
our selves into such an Undertaking as this was, it could not but be expected, that it
would be a Question put to many of us: To what end all this was? Where it was
we intended to terminate? Into what we intended to resolve? That these were

Questions he met with; and it was probable, every one had or would meet with from those persons, whose Assistance we expected; and that if there was any thing of a personal Interest designed or intended, that there were but very few of those, whose Hearts were now with us, but would fall off: And therefore, since we were upon such an Undertaking, we should resolve our selves into such Principles, as should put the Properties and Liberties of the People into such Hands, as it should not be easily invaded by any that were trusted with the Supream Authority of the Land; and it was mentioned to resolve all into the Authority of the Parliament. This was moved by him: and had a little harshness to some that were there; but yet upon the whole matter we generally consented to it, That it was nothing but a Publick Good that we all intended. But then after that, we fell to that which we charged our selves with at our first Meeting, and that was concerning sending into *Scotland*, and of settling an Understanding with my Lord of *Argyle*: And in order to this, it was necessary to send a Messenger thither to some persons, whom we thought were the most leading men of the Interest in *Scotland*. This led us to the insisting on some particular persons; the Gentlemen named were my Lord *Melvin*, Sir *John Cockram*, and the *Campbells*; I am sure it was some of the Alliance of my Lord of *Argyle*, and I think of the Name. As soon as this was propounded, it was offered by this Gentleman Collonel *Sidney*, that he would take the care of the Person; and he had a person in his thoughts, that he thought a very fit man to be intrusted; one or two, but one in special, and he named *Aaron Smith* to be the Man, who was known to some of us, to others not; I was one that did know him, and as many as knew him thought him a proper person. This is all that occurs to me that was at the second Meeting, and they were the only Consuls that I was at.

Mr. Att. Gen. What was he to do?

Lord Howard. There was no particular Deed for him, more than to carry a Letter. The Duke of *Monmouth* undertook to bring my Lord *Melvin* hither, because he had a particular dependance upon him, and I think some Relation to his Lady: but to Sir *John Cockram* there was a Letter to be sent under the disguise of carrying on some Business of the Plantation in *Carolina*. This Letter I suppose was writ by my Lord *Russel* (though I know it not) for he was personally known to my Lord *Russel*, and I don't know that he was known to any of us. About three Weeks after this, then he was dispatched I suppose.

Mr. Att. Gen. To what purpose were these Gentlemen to come up?

Lord Howard. These were to acquaint us how they found *Scotland* tempered, and what Opportunities or Advantages there was or might be of putting them in a Commotion, and how Men might be raised, and how they would fall under *Argyle*, and also to keep Time and Place with us. After this, I was with Collonel *Sidney*, when he was going into *London*, and he did take out several *Guinies*, I can't tell how much 'twas, I suppose they might be about sixty, and put them into his pocket (and set me down at my Lodging) which he said were to give *Aaron Smith*; whether he gave it or no I don't know; and after that he was sent.

Mr. Att. Gen. Who told you so?

Lord Howard. Collonel *Sidney*; for I was inquiring of him; and he said, he had not heard of him in three Weeks, or but once when he was about *Newcastle*. After this, I had occasions that called me into the Country, and there I was. Some time after that, I went to the *Bath*: And this is all the account I can give.

Mr. Sol. Gen. Do you know that *Aaron Smith* did go?

Lord Howard. I know nothing but by hear-say. Collonel *Sidney* told me, he was gone, and was upon the Road, and he heard from him about *Newcastle*.

L. C. J. Did you understand by the discourse after he was gone, that he went in pursuance of that Debate.

Lord Howard. Yes my Lord, That was the whole end of his going.
Mr. Just. Wyndham. I think you say, that Gentleman (speaking of Col. *Sidney*) understood not to send him?
L. Howard. Yes, he did.

L. C. J. Will you ask him any Questions?

Col. Sidney. I have no Questions to ask him.

Mr. At. Gen. Silence. You know the Proverb. The next step is to they you my Lord, that these persons came up immediately after *Aaron Smith* went down thither; and according to that which was said to be the Shadow and Presence of their coming hither; they pretended they came about *Carolina* business. *Sir Andrew Foster* and *Mrs. Blithwaite*.

Mr. At. Gen. Pray Sir, give an account what Scotch Gentlemen came up lately.

Sir Andrew Foster. My Lord, about the end of the Spring, or beginning of Summer, as I remember, these Gentlemen, *Sir John Cockram*, and *Commisary Monro*, and the two *Campbells* Father and Son, came up hither. I did not see the Father at all, but I saw the Son the day of the *Lord Russels* Tryal; but the other two, I think I saw a little before the Discovery of the Plot.

Mr. At. Gen. What did they pretend they came about?

Sir Andrew Foster. They pretended they came to make a purchase in *Carolina*, and I saw the Commission from the Persons said to be concern'd in that Design.

L. C. J. Who do you speak of?

Sir Andrew Foster. *Sir John Cockram* and *Commisary Monro*.

Mr. At. Gen. As soon as the Rumour came of the Plot, what became of those Gentlemen?

Sir Andrew Foster. *Sir John Cockram* absconded, but *Commisary Monro* never absconded, and the *Campbells* I heard were seized, changing their Lodging from place to place.

Mr. At. Gen. *Mr. Atterbury*, will you give my Lord and the Jury an account what you know of these Scotch men, their absconding and lying hid?

Mr. Atterbury. My Lord, upon the latter end of June, or the beginning of July; the beginning of July it was, it was sent for into London upon a discovery of some Scotch Gentlemen that lay about *Black-Feyers*; and when I came down there, there was the *Common Serjeant* and some others had been before me, and found them making an escape into a Boat.

Mr. At. Gen. Who were they?
Mr. Atterbury. *Sir Hugh Campbell*, and *Sir John Cockram*, and one that was committed to the Gate House by the Council as soon as brought thither.

Mr. At. Gen. We shall end here, my Lord: how long had they been in Town?

Mr. Atterbury. They had been in Town some little time.

Mr. At. Gen. We have done with this piece of our Evidence. Now to shew that while this Emillary was in Scotland, at the same time the Colonel (which will be another Overt Act of the Treason) was writing a Treasonable Pamphlet, I will call you the Witnesses. It is all of his own writings. *Sir Phillip Lloyd*.

Mr. At. Gen. *Sir Phillip Lloyd*, Pray will you look upon those Papers, and give my Lord and the Jury an account where you found them.

Sir Phillip Lloyd. I had a Warrant my Lord, from the Secretary by the King and Council, to seize *Mr. Algernon Sidney's* Papers; and pursuant to it, I did go to his House, and such as I found there I put up. I found a great many upon the Table, amongst which were these, I suppose it is where he usually writes. I put them in a Pillowbear I borrowed in the house, and that in a Trunk: I desired *Colonel Sidney* would put his Seal upon them, that there should be no mistake; he refused, so I took my Seal, and sealed up the Trunk, and it was carried before me to *Mr. Secretary Jenkins* Officer. When the Committee late, I was commanded to undo the Trunk, and I did so, and found my own Seal upon it. And I took the Papers out of the Bag, I put them into before.

Algernon Sidney, Esquire.

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L. C. J. Was Col. Sidney present when you seized these Papers?

Sir Phil. Lloyd. Yes. Mr. Att. Gen. Are these some of those Papers?

Sir Phil. Lloyd. Yes, I verily believe it.

Mr. Att. Gen. In the next place, I think we have some Papers of his particular Affairs which will prove his hand. Call Mr. Sheppard, Mr. Cooke and Mr. Cary.

Mr. North. Sir Philip Lloyd, when were they Seized?

Sir Phil. Lloyd. Towards the latter end of June, my Lord.

Jury Man. Which June? Sir Phil. Lloyd. Last June.

Mr. Sheppard Sworn.

Mr. Att. Gen. Pray will you look upon those Writings (shewing the Label) are you acquainted with Col. Sidney's hand? Mr. Sheppard. Yes, my Lord.

Mr. Att. Gen. Is that his hand Writing?

Mr. Sheppard. Yes Sir, I believe so. I believe all these Sheets to be his hand.

Mr. Att. Gen. How come you to be acquainted with his hand?

Mr. Sheppard. I have seen him write the Indorsement upon several Bills of Exchange.

Mr. Cary Sworn.

Col. Sidney. My Lord, I desire you would please to consider this, That similitude of hands can be no Evidence.

L. C. J. Reserve your self till anon, and make all the advantageous Remarks you can. Mr. Att. Gen. Have you had any dealing with him?

Mr. Cary. I never saw him write to my knowledge more then once in my life, but I have seen his Indorsement upon Bills, and 'tis very like that.

L. C. J. Do you believe it is his hand as far as you can guess?

Mr. Cary. My Lord, it is like what came to me for his Hand-writing.

L. C. J. And you believe it to be his Hand? Mr. Cary. Yes.

Mr. Cooke Sworn, and the Papers shewn him.

L. C. J. What say you Mr. Cook?

Mr. Cook. My Lord, I did never see Col. Sidney write, but I have seen several Notes that have come to me with Indorsement of his Name, and we have paid them, and 'tis like to this.

L. C. J. And you were never called to account for mispayment?

Mr. Cook. No, my Lord.

Mr. Att. Gen. I pray it may be read. We will read as much as is necessary to prove the Indictment. Col. Sidney. I pray it may be all read.

L. C. J. Mr. Attorney must have what part he desires read, and you shall have what part you will have read afterwards.

Col. Sidney. I desire all may be read.

Mr. Att. Gen. Begin there. Secondly, There was no Absurdity in this, because it was their own Case. Clerk reads.

Secondly, There was no Absurdity in this, though it was their own Case; but to the contrary, because it was their own Case: that is, concerning themselves only, and they had no Superiour. They only were the competent Judges, they decided their Controversies, as every man in his own Family doth such as arise between Him and his Children, and his Servants. This Power hath no other restriction, than what is put upon it by the municipal Law of the Country, where any man, and that hath no other force than he is understood to have consented unto it. Thus in England every man (in a degree) hath a right of chastising them; and in many places (even by the Law of God) the Master hath a Power of Life and Death over his Servant: It were a most absurd folly, to say, that a man might not put away, or in some places kill an adulterous Wife, a disobedient Son, or an unlawful Servant, because he is Party and Judge; for the case doth admit of no other, unless he had abridged his own right by entering into a Society where other Rules are agreed upon, and a superiour Judge constituted, there being none such between King and People:

That

That People must needs be the Judge of things happening between Them and Him whom they did not constitute, that they might be great, glorious, and rich; but that they might judge them, and fight their Battels; or otherwise do good unto them as they should direct. In this sense, he that is Singulis Major, and ought to be obliged by every man in his just and lawful commands tending to the publick Good: And must be suffered to do nothing against it, nor in any respect more than the Law doth allow.

For this reason Bracton saith, that the King hath three Superiours, to wit, Deum Legem & Parliament; that is, the Power originally in the People of England, is delegated unto the Parliament. He is subject unto the Law of God as he is a Man to the People that makes him a King, in as much as he is a King: the Law sets a Measure unto that Subjection, and the Parliament Judges of the particular Cases thereupon arising. He must be content to submit his Interest unto theirs, since he is no more than any one of them, in any other respect than that He is by the consent of all raised above any other.

If he doth not like this Condition, he may renounce the Crown; but if he receive it upon that Condition, (as all Magistrates do the Power they receive) and swear to perform it, He must expect that the Performance will be exacted, or Revenge taken by those that he hath betrayed.

If this be not so, I desire to know of our Author, how one or more men can come to be guilty of Treason against the King, as Lex facit ut sit Rea. No man can ow more unto Him than unto any other; or He unto every man by any rule but the Law; and if he must not be Judge in his own Case, neither he nor any other by Power received from him, would ever try any man for an Offence against him, or the Law.

If the King, or such as he appoints, cannot judge him, he cannot be judged by the waies ordinarily known amongst us. If he or other by Authority from him may judge, he is Judge in his own Case, and we fall under that which he accounts the utmost of all absurdities: if a Remedy be found for this, he must say, that the King in his own Case may judge the People, but the People must not judge the King, because it is theirs; that is to say, the Servants entertained by the Master may judge him, but the Master must not judge the Servant whom he took only for his own use. The Magistrate is bound by no Oath or Contract to the People that created him, but the People is bound to its own Creature, the Magistrate.

This seems to be the ground of all our Authors follies; he cannot comprehend that Magistrates are for or by the People, but makes this conclusion, as if Nations were created by or for the Glory or Pleasure of Magistrates, and affect such a piece of nonsense; it ought not to be thought strange if he represent, as an absurd thing, that the headless Multitude may shake off the Toke when they please. But I would know how the Multitude comes under the Toke, it is a badge of Slavery. He says that the Power of Kings is for the Preservation of Liberty and Property. We may therefore change or take away Kings without breaking any Toke, or that made a Toke, which ought not to be one; the Injury is therefore in making or imposing, and there can be none in breaking it.

That if there be not an Injury, there may perhaps be an Inconvenience; if the headless Multitude may shake off the Toke, I know not why the Multitude should be concluded to be headless; it is not alwaies so. Moses was Head of the Multitude that went out of Egypt, Othniel led them against the King of Melopotamia, under the conduct of Phœbidas; they obtained a Victory against the Moabites, they had the like success under Shamger, Barac, Gidion, Jeptha, Samuel, Sampson, and others against the Canaanites, Midianites, Philistines and others; the Multitude that opposed Saul and Ishbosheth had David for its Head; and the Ten Tribes that rejected Rehoboam chose unto themselves Jeroboam; the Athenians rising against the Thirty Tyrants had Thracibulus; those that drave from Thebes were conducted by Pelopidas; when the Romans drave out the Tarquins, they chose Brutus and Publicola, and they destroyed the Decem Jurii under Horatius and Vellerius. All the Multitudes that afterwards revolted from them under Mauritius, Tetricus, Spartanus, and others, were not headless; and we know of none that were, but all

either found Heads, or made them. The Germans set up Arminius; the Britains, and others in later times, the Cartians, that rise against Peter the Cruel, had the Lord Destructa Mara.

The French, when they grew weary of the corrupted Races of Pharamond, and Pepin, and the same Pepin and Hugh Capet: The Scots when they slew James the Third, had his Son to be their Head; and when they deposed and imprisoned Queen Mary, the Earl of Murray and others supplied the want of Age that was in her Son: And in all the Revolutions in England, the People have been headed by the Parliament, or the Nobility and Gentry who composed it; and when the Kings failed of their Duties, by their own Authority called in. The Multitude therefore is not ever headless, but doth either find or create Heads unto it self, as occasion doth require; and whether it be one man, or a few, or more, for a short or a longer time, we see nothing more regular than its motions. But they may, saith our Author, shake off the Yoke; and why may they not, if it prove un-
bearable or harmful unto them? Why should not the Israelites shake off the Yoke of Pharaoh, Jabin, Sisera, and others that oppressed them?

When Pride had changed Nebuchadnezzar into a Beast, what should persuade the Assyrians not to drive him out amongst Beasts, until God had restored unto him the Heart of a Man? When Tarquin had turned the legal Monarchy of Rome into a most abominable Tyranny, why should they not abolish it? And when the Protestants of the Low Countries were so grievously oppressed by the Power of Spain, under the proud, cruel and savage conduct of the Duke of Alva, why should not they make use of all the means that God had put into their hands for their Deliverance? Let any man who sees the present state of the Provinces that then united themselves, judge whether it is better for them to be as they are, or in the condition unto which his Fury would have reduced them, unless they had, to please him, renounced God and their Religion: Our Author may say, they ought to have suffered: The King of Spain by their Resistance lost those Countries; and that they ought not to have been Judges in their own case. To which I answer, That by resisting they laid the Foundation of many Churches, that have produced multitudes of men eminent in Gifts and Graces; and established a most glorious and happy Common-Wealth, that hath been since its first beginning, the strongest Pillar of the Protestant Cause, now in the world, and a place of Refuge unto those who in all parts of Europe have been oppressed for the Name of Christ: Whereas they had slavishly, and, I think I may say, wickedly as well as foolishly suffered themselves to be butchered, if they had left those empty Provinces under the Power of Anti-Christ, where the Name of God is no otherwise known than to be blasphemed.

If the King of Spain desired to keep his Subjects, he should have governed them with more Justice and Mercy; when contrary unto all Laws both humane and divine, he seeks to destroy those he ought to have preserved, he can blame none but himself, if they deliver themselves from the Tyranny: and when the matter is brought to that, That He must not reign, or they over whom he would reign must perish; the matter is easily decided, as if the Question had been asked in the time of Nero or Domitian, Whether they should be left at liberty to destroy his best part of the World, as they endeavoured to do, or it should be rescued by their Destruction? And as for the Peoples being Judges in their own case, it is plain, they ought to be the only Judges, because it is their own, and only concerns themselves.

Mr. Att. Gen. The latter end, the last sheet of all, §. 35.

L. C. J. The Argument runs through the Book, fixing the Power in the People.

Ch. of the Cr. The general Revolt of a Nation from its own Magistrates, can never be called Rebellion.

Ch. of Cr. The Power of calling and dissolving Parliaments is not in the King.

Mr. Att. Gen. So much we shall make use of; if the Collonel please to have any other part read to explain it, he may.

Then the Sheets were shewn to Col. Sidney.
 Col. Sidney. I do not know what to make of it. I can read it.
 E. C. J. Ay, no doubt of it, better than any man here. Fix on any part you have a mind to have read.

Col. Sidney. I do not know what to say to it, to read it in pieces thus.
 E. C. J. I perceive you have disposed them under certain heads. To what heads will you have read?

Col. Sidney. My Lord, let him give an account of it that did it.

Mr. Att. Gen. My Lord we will not delay Colonel Sidney from entering upon his Defence, only we have this piece of Evidence to give further. One of his Accomplishes was my Lord Russell, we will give in Evidence his Conviction. We will only ask my Lord Howard; Was your Lordship sworn as a Witness at the Trial of my Lord Russell?

L. Howard. Yes.
 Mr. Att. Gen. Whether or no, when you met were there in those Debates any Reflections upon the King, that he had broken his Duty?

L. Howard. Not that I remember.

Mr. Att. Gen. Why would you rise?

L. Howard. If you mean upon the Misgovernment, not personally upon the King.

Mr. Att. Gen. Ay.

L. Howard. Yes, and principally and chiefly that, which we thought was the general disgust of the Nation, the imposing upon the City at that time.

Mr. J. Wythins. That was complained of at that time.

L. Howard. Yes, my Lord, we took it all along to be the chief grievance.

E. C. J. Have you any more Witnesses?

Mr. Sol. Gen. I know there is no time sufficient to make things clear. If the Jury have a mind to have the words read again.

E. C. J. If they have a mind let it.

Then Mr. Trinder was Sworn, and testified it to be a true Copy of the Record, and laid he examined it at *Eschmengers Hall* with Mr. *Tanner*.

Then the Record of the Conviction of the Lord Russell was read.

E. C. J. What will you go to next, Mr. Attorney?

Mr. Sol. Gen. We have done, unless the Jury desire to have the words of the Libel read again.

(But they did not.)

Col. Sidney. My Lord, I desire to know upon what Statute I am Indicted.

Mr. Att. Gen. My Lord, I will give as plain an Answer. You are Indicted upon the old Statute of 25 E. 3.

Col. Sidney. Then I desire to know upon what branch of that Statute.

Mr. Att. Gen. Why, I will acquaint you. 'Tis upon the first branch of that Statute, for Conspiring and Compassing the Death of the King.

Col. Sidney. Then I conceive, what does not come within that, does not touch me.

Mr. Att. Gen. Make what Inferences you please. Colonel, we will answer you.

Col. Sidney. I desire to know what the Witnesses have sworn against me upon that point.

Mr. Att. Gen. Go on, you have heard the Witnesses as well as we.

E. C. J. He says, you are Indicted upon the Statute of 25 E. 3. which Statute makes it High Treason to Conspire the Death of the King, and the Overt Act is sufficiently set forth in the Indictment; now the Question is, whether 'tis proved.

Col. Sidney. They have proved a Paper found in my Study of *Caligula* and *Mero*, that is Compassing the Death of the King, is it?

E. C. J. That I shall tell the Jury. The Point in Law you are to take from the Court, Gentlemen: Whether there be Fact sufficient, that is your duty to consider.

Col. Sidney. I say my Lord, that since I am Indicted upon that Statute I am not to take notice of any other. I am Indicted for Conspiring the Death of the King, because such a Paper is found in my House; Under favour, I think that compasses

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thing small to me. For though Sir William Lloyd did ask me, whether I would put
 my hand to it, he did not ask me till he had been in my Closet, and I knew not
 what he had put in, and he told him I would not do it. Then you see there is a Gen-
 tleman upon a multitude of hands, as my Lord, we know what similitude of hands is in
 this age. One told me, within these two days, that one came to him, and offered
 him so countess any hand he should show him in his last hour. So then, my Lord,
 I have nothing to say to the Papers, or the Papers of Witnesses. I cannot be in-
 stituted, much less tried on a Condemnation, but I do not know what a Court here must
 have Witnesses to that very branch in which the Death is to be, which I will
 be distinguished from the Law of War and Conscience. The Death of the King
 are two distinct things, distinction in hands and reason, and to distinguish in the
 Sentence. And therefore the Conspiring the Death of the King is a Treason; and the
 other not. 1 E. 6. 12. 5 E. 6. 11. does expressly say, there shall be two Witnesses
 to either of these Acts. Now here is my Lord Howard, (I have enough to say of
 himself and by himself) who speaks of the men, whom he calls a select Coun-
 cil, and yet selected by no man in the world. I desire to know who selected my
 Lord Howard? Who selected me? If they were selected by no body, 'tis a Bull to
 say they were a select Council. If they were not selected, but erected themselves in-
 to a Cabal, then they have either confidence in one another, or find they are near
 equally able to assist in the Design. There is nothing of all this, of these six men
 your strength to one another. For my own part I never spoke with the Duke of
 Monmouth above three times in my life, and one time was when my Lord Howard
 brought him to my House and cozened us both. He told the Duke I invited him,
 and he told me the Duke invited himself, and neither of them was true. Now that
 such men as these are, who hardly know one another, should presently fall into
 a great and intimate friendship, and trust and management of such businesses as these
 are, is a thing utterly improbable, unless they were mad. Now I do find in my Lord
 Howard's Deposition against my Lord Russell, that they were in prosecution of my
 Lord Shaftsbury's design; and yet he acknowledges the Duke of Monmouth said he
 was mad, and he himself said so too. Now that they should joyn with four more
 in the prosecution of the design of a madman, they must be mad too. Now whe-
 ther my Lord Howard would have you think he was mad, because a madman can-
 not be guilty of Treason, I cannot tell. My Lord Howard in his last Deposition at
 my Lord Russell's Trial, fixes the two meetings, one about the middle of January,
 the other ten days after: Now he fixes one to be the latter end of January, the
 other in the middle of February. Then he makes it to be the prosecution of my
 Lord Shaftsbury's design. I do not find that any one there had any thing to do with
 my Lord Shaftsbury, for my part I had not. I had not seen his face in two years.
 Then, my Lord, that I go upon is, whatever my Lord Howard is, here is but one
 Witness. The Law of God and the Law of man, understood and taken by all men,
 does require two Witnesses; Moses says so, the Apostles the same after him,
 and Christ says the same. That every matter is to be established by two Witnesses.
 There ought to be two Witnesses to the same thing. Now for one to come and tell
 a Tale of a Tub, of an imaginary Council, and another of a Libel, a Paper written
 no body knows, when, is such a thing; you can never go over it. But if the Law of
 God be, that there must be two Witnesses to the same Fact, there is an end of this
 matter. And under the Judicial Law the Penalty would be in this Case, to put a man
 to death. Now there are but two things, which if allowed of, no body will be
 safe for Perjury. If one is to suffer men to give their testimony, one to one thing
 and another to another, that the Fraud cannot be discovered, and the other is to take
 away the Punishment. Now the Punishment is taken away in some measure; and
 the Law takes away the other point, whereby the Fraud cannot be discovered, and then
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there is no defence can be made. That both Witnesses should be to the same point, see the Story of *Susanna*. Two Elders testified they saw her in the Act of Adultery. They were carrying of her to her death: both of them said the same thing; until they were taken asunder and examined, the fraud was not discovered; and then one said, she was under a Tree of the right hand, and the other, under the Tree on the left; and she escaped, and they were punished. But now if you apply it to several Facts, my Lord *Howard* may say what he pleases, and if another shall come with a supplemental proof, no Justice can be had. But, my Lord, I desire this, If there be two Witnesses to prove the Conspiracy, and in that there were those matters done that are Treason, I must answer to it; but if there be not, I presume I need say nothing to it. If you do not allow it me, I desire Council to Argue in

L. C. J. That is a point of Fact, whether there be two Witnesses. I tell you before hand, one Witness is not sufficient.

Col. Sidney. Why then there is my Lord *Howard*, and never another.

L. C. J. Nay, do not make those Inferences; I will tell the Jury, if there be not two Witnesses as the Law requires in this Case, they ought to acquit you.

Col. Sidney. You confound me, I cannot stir. You talk of a Conspiracy. What is a Conspiracy to kill the King? Is there any more Witnesses then one for Levying of War?

L. C. J. Pray do not deceive your self; You must not think the Court and you intend to enter into a Dialogue. Answer to the Fact; if there be not sufficient Fact, the Jury will acquit you. Make what Answer you can to it.

Col. Sidney. Then I say, There being but one Witness, I am not to Answer to it at all.

L. C. J. If you rely upon that, we will direct the Jury presently.

Col. Sidney. Then for Levying War, what does any one say? My Lord *Howard*, let him if he please, reconcile what he hath said now, with what he said at my Lord *Ruffel's* Tryal. There he said, he said all he could; and now he has got I do not know how many things that were never spoken of there. I appeal to the Court whether he did then speak one word of that, that he now says of Mr. *Hambden*. He sets forth his Evidence very Rhetorically, but it does not become a Witness, for he is only to tell what is done and said; but he does not tell what was done and said. He says they took upon them to consider, but does not say what one man said; or what one man resolved, much less what I did. My Lord, if these things are not to be distinguished, but shall be jumbled all up together, I confess I do not know what to say.

L. C. J. Take what liberty you please. If you will make no Defence, then we will direct the Jury presently. We will direct them in the Law, and recollect matter of Fact as well as we can.

Col. Sidney. Why then my Lord, I desire the Law may be reserved to me, I desire I may have Council to that point of there being but one Witness.

L. C. J. That is a point of Fact. If you can give any testimony to disparage the Witness, do it.

Col. Sidney. I have a great deal to that.

L. C. J. go on to it then.

Col. Sidney. Then, my Lord, was there a War levied? Or was it prevented? Why then, if it be prevented, 'tis not Levied; if it be not Levied, 'tis not within the Statute; so this is nothing to me.

L. C. J. The Court will have patience to hear you; but at the same time I think 'tis my duty to advertise you, That this is but mispending of your time. If you can Answer the Fact, or if you have any mind to put any disparagement upon the Witnesses, that they are not Persons to be believed, do it; but do not ask us Questions this way or rather.

Col. Sidney. I have this to say concerning my Lord *Howard*: He hath accused himself

himself of divers Treasons, and I do not hear that he has his Pardon of any: He is under the terror of those Treasons, and the Punishment for them: He hath shewn himself to be under that terror. He hath said, That he could not get his Pardon, until he had done some other Jobs; till he was past this drudgery of Swearing: that is, my Lord, that he having incurred the Penalty of High Treason, he would get his own Indemnity by destroying others. This by the Law of God and man, I think, destroys a mans Testimony. Besides, my Lord, he is my Debtor, he owes me a considerable Sum of Money. I lent him in time of his great necessity; he made some Covenants with me for the Payment of that Money, which he hath broken; and when his Mortgage was forfeited, and I should take the advantage the Law gives me, he finds out a way to have me laid up in the Tower. He is a very subtle man. At my Lord *Russels* Trial, he carried his Knife, he said, between the Paring and the Apple; and to this is a point of great nicety and cunning, at one time to get his own Pardon, and at the same time to save his Money. Another thing, my Lord, is, when I was Prisoner, he comes to my House, and speaks with my Servant, and says, how sorry he was that I should be brought in danger on this account of the Plot, and there he did, in the presence of God, with hands and eyes lifted up to Heaven, swear, he did not believe any Plot, and that it was but a Sham; and that he was confident, if I had known any thing, I would have told it him. He hath said somewhat of this before, I have several Witnesses to prove both. He was desirous to go further, and he would not only pay my Debt by his Testimony against me, but he would have got my Plate and other Goods in my hands into his hands, and he desired my Men, as a place of trust, to put them into his hands. And the next news was, that there was a Warrant against my Lord *Russel* and me. But then, my Lord, he made other affirmations in the same presence of God, that I was innocent in his opinion, and he was confident of it; for if he had known any thing of it, he would have told it. Now I know, in my Lord *Russels* Case, there was Dr. *Burnet* said something like it. And when he came to answer it, he said he was to face it out, and make the best of it he could. Now he did face it out bravely against God, but he was very timorous of Man. So that, my Lord, he does say at the same time, at my Lord *Russels* Trial, upon his Oath, That he did believe that the Religious obligation of an Oath did not consist in the formality of applying it to the place, &c. but in calling God to witness. So that when he did call God to witness before Dr. *Burnet* and my Servant, and others, and this is not consistent with the Oath he has taken here, as the Gentleman said at my Lord *Russels* Trial; unless he has one Soul in Court, and had another at my House, these things are inconsistent, and cannot be true; and if he swear both under the Religion of an Oath, he swears himself perjured. Then, my Lord, he talks of *Aaron Smith*, What have I to do with *Aaron Smith*? He says I sent him; my Lord, there is no body else speaks a word of it. Then by a strange kind of construction and imagination, they will have it, that some Papers here, which are said to be found in my Study, have relation to this Plot, as they call it; I know of none, nor am in none. Now, my Lord, I am not to give an account of these Papers, I do not think they are before you, for there is nothing but the similitude of Hands offered for Proof. There is the like Case of my Lady *Carr* some few years ago: She was indicted of Perjury; and, as Evidence against her, some Letters of hers were produced, that were contrary to what she swore in *Chancery*, and her Hand was proved; that is to say, it was like it: but my Lord Chief Justice *Keiling* directs the Jury, that though in Civil Causes it is a Proof, yet it is the smallest and least of Proofs; but in Criminal Cases it was none at all. So that my Lord *Howards* Testimony is single; and what he talks of those two businesses that he calls a Consult, and *Aaron Smith*, is destroyed by want of Proof. What could six men do? Can my Lord *Howard* raise five men by his Credit? by his Purse? Let him say as much for me, with all my heart? for my

part I do not know where to raise five men: That such men as we are, that have no followers, should undertake so vast a Design, is very unlikely: And this great Design that was carried on thus, it had neither Officers nor Soldiers, no place, no time, no Money for it. That which he said last time, which he forgot now, he talked of twenty five or thirty thousand pound, but no man knew where it was to be had, but last time he said, it was spoken in jest. Now this is a pretty Cabal, that six men should meet about a business, and they neglect every one of the points relating to the thing they met about, make no step about the business, and if any one did speak of it, it was but in jest. This is a very deep maintaining of the Plot. Then my Lord, as to these Papers, I do not think, I am to give any account of them, I would say nothing to the Disparagement of Sir *Philip Lloyd*, I never saw him till he came to my House, but yet I say, he is the Kings Officer, and when I am prosecuted at the Kings Suit, I think he ought to be no Witness. The Government of *France* is violent and absolute, but yet a few years ago, a Minister of State had his Papers taken from him, and abundance of them had dangerous Plots against the King in them; but because they were inventoried in his Officers presence, or those deputed by him, there was no use could be made of them, it was an irreparable fault in the Process, and that saved him. The similitude of Hands is nothing: we know that Hands will be counterfeited, so that no man shall know his own Hand. A Gentleman that is now dead told me, that my Lord *Arlington*, about five years ago, desired him to write a Letter, and seal it as well as he could; he writ it with care, and sealed it with a Wafer and Wax upon it, and within a few days my Lord *Arlington* brought him five Letters, and he did not know which was his own. The Attorney shews these Papers to me, I do not know whether they are my own or no; but these Papers, such as they are, do abhor, as much as any one can, such a Design. Look upon them, you see they are all old Ink. These Papers may be writ perhaps these twenty years, the Ink is so old. But, my Lord, it is a polemical Discourse, it seems to be an Answer to *Filmer* which is not calculated for any particular Government in the World: It goes only upon these general Principles, That according to the universal Law of God and Nature there is but one Government in the World, and that is intire and absolute; and that the King can be bound by no Law, by no Oath, but he may make all Laws, and abolish them as he pleases: And this whether of Age or no, a Man or a Child, of Sense or out of his Sense. Now, my Lord, what if any man in his Cabinet should have written this Book? Then he has another Principle, he says, 'Tis the same thing whether a King come in by Election, by Donation, by Inheritance, or Usurpation, or any other way; than which, I think, never was a thing more desperately said. *Cromwell*, when one *White* a Priest wrote a Book, wherein he undertook to prove, *That Possession was the only Right to Power*, though he was a Tyrant, and a violent one, (you need not wonder I call him Tyrant, I did so every day in his Life, and acted against him too) it would be so odious a Principle, he would not endure it, and he used him very slightly for it. Now this *Filmer*, that no man must write against, is the man that does assert it. That 'tis no matter how they come by their Power, and gives the same Power to the worst Usurpers, as they that most rightly come to the Crown. By the same Argument, if the arrantest Rascal of *Israel* had killed *Moses*, *David*, &c. and seized upon the Power, he had been possessed of that Power, and been Father of the People. If this be Doctrine, my Lord, that is just and good, then I confess it may be dangerous for any thing to be found in a mans House contrary to it; but if a Commoner of *England* write his present thoughts, and another man upon looking on his Book, write his present thoughts of it, what great hurt is there in it? And I ask Mr. Attorney how many years ago that was written?

L. C. J. I don't know what the Book was in answer to. We are not to speak of any Book that Sir *Robert Filmer* wrote, but you are to make your Defence, touching a Book

Book that was found in your Study, and spend not your time, and the Courts time, in that which serves to no other purpose than to gratifie a luxuriant way of talking that you have. We have nothing to do with his Book, you had as good tell me a gain, That there was a parcel of people rambling about, pretending to be my Lord *Rafel* Ghost, and so we may answer all the Comedies in *England*. Answer to the matter you are Indicted for. Do you own that Paper?

Col. Sidney. No, my Lord.

L. C. J. Go on then, it does not become us to be impatient to hear you, but we ought to advertise you, that you spend not your time to no purpose, and do your self an Injury.

Col. Sidney. I say first, 'Tis not proved upon me: and secondly, 'Tis not a Crime if it be proved.

L. C. J. You began very materially in one thing, it is material for you to apply your self to take off the Credibility of my Lord *Howard* that is a Witness; call your Witnesses to that purpose, or if you have any other point to take away the Credibility of any other Witness.

Col. Sidney. My Lord, I have seven or eight points of Law.

L. C. J. I hear not one yet.

Col. Sidney. Why, my Lord, Conspiring to levy War is not Treason, and I desire to have Counsel upon that.

L. C. J. 'Tis not a Question. You had as good ask me whether the first Chapter in *Liteler* be Law.

Col. Sidney. My Lord, I have neither made War, nor conspir'd to levy War.

L. C. J. You are still in a mistake, you shall not think that we intend to dialogue with you, to let you know how far the proof hath been given or not given, but when we come to direct the Jury, then we shall observe how far the Law requires there should be two Witnesses. But whether there be such a proof, that must be left to the Jury.

Mr. Just. Wythins. If you agree the Conspiracy, I will tell you my mind of it; I cannot give you my opinion in Law, till the Fact be stated.

L. C. J. The Law always arises upon a point of Fact; there can be no doubt in point of Law, till there be a settlement in point of Fact.

Mr. Just. Holloway. My Lord has put you in a right way: the Conspiracy is proved but by one Witness, if you have any thing to take off his Credibility 'tis to the purpose.

Col. Sidney. Truly, my Lord, I do as little intend to mispend my own Spirit, and your Time, as ever any man that came before you. Now, my Lord, if you will make a Concatenation of one thing, a Supposition upon Supposition, I would take all this asunder, and shew, if none of these things are any thing in themselves, there can be nothing joined together.

L. C. J. Take your own Method, Mr. Sidney; but I say, if you are a man of low Spirits and weak Body, 'tis a duty incumbent upon the Court to exhort you not to spend your time upon things that are not material.

Col. Sidney. My Lord, I think 'tis very material that a whimsical imagination of a Conspiracy should not pass for a real Conspiracy of the death of the King; besides, if these Papers were found in my House, 'tis a Crime created since my Imprisonment, and that cannot come in, for they were found since. My Lord, if these Papers are right, it mentions 200 and odd sheets, and these show neither beginning nor ending, and will you, my Lord, Indict a Man for Treason for scraps of Paper, found in his House, relating to an ancient Paper, intended as innocently as any thing in the world, and patch this to my Lord *Howard's* Discourse, to make this a contrivance to kill the King: Then, my Lord, I think 'tis a Right of Mankind, and 'tis exercised by

all studious men, that they write in their own Closets what they please for their own Memory, and no man can be answerable for it, unless they publish it.

L. C. J. Pray don't go away with that right of mankind, that it is lawful for me to write what I will in my own Closet, unless I publish it; I have been told, Curse not the King, not in thy Thoughts, not in thy Bed-Chamber, the Birds of the Air will carry it. I took it to be the duty of mankind to observe that.

Col. Sidney. I have lived under the Inquisition—

L. C. J. God be thanked, we are governed by Law.

Col. Sidney. I have lived under the Inquisition, and there is no man in Spain can be tryed for Heresie—

Mr. J. Wythms. Draw no Presidents from the Inquisition here, I beseech you Sir.

L. C. J. We must not endure men to talk, that by the right of nature, every man may contrive mischief in his own Chamber, and he is not to be punished, till he thinks fit to be called to it.

Col. Sidney. My Lord, if you will take Scripture by pieces, you will make all the Penmen of the Scripture blasphemous; you may accuse *David*, of saying, There is no God; and accuse the Evangelists, of saying, Christ was a Blasphemer and a Seducer; and the Apostles, That they were drunk.

L. C. J. Look you, *Mr. Sidney*, if there be any part of it, that explains the sense of it, you shall have it read; indeed we are trifled with a little. 'Tis true, in Scripture 'tis said, there is no God, and you must not take that alone, but you must say, the fool hath said in his heart, there is no God. Now here is a thing impured to you in the Libel; if you can say, there is any part that is in excuse of it, call for it. As for the purpose, whosoever does publish, that the King may be put in chains or deposed, is a Traitor; but whosoever says, that none but Traitors would put the King in Chains or depose him, is an honest man; therefore apply *ad idem*. But don't let us make Excursions.

Col. Sidney. If they will produce the whole, my Lord, then I can see whether one part contradicts another.

L. C. J. Well, if you have any Witnesses call them.

Col. Sidney. The Earl of *Anglesey*.

L. C. J. Ay, in God's Name, stay till to morrow in things that are pertinent.

Col. Sidney. I desire to know of my Lord *Anglesey*, what my Lord *Howard* said to him concerning the Plot that was broken out.

Lord Anglesey. Concerning this Plot you are now questioned for?

Col. Sidney. The Plot for which my Lord *Russel* and I was in Prison.

Lord Anglesey. The Question I am asked, is, what my Lord *Howard* said before the Tryal of my Lord *Russel*, concerning the Plot; I suppose, this goes as a branch of that he was accused for. I was then in the Country, when the Business was on foot, and used to come to Town a day or two in the Week, living near in *Hertfordshire*, and I understanding the Affliction my Lord of *Bedford* was in, I went to give my Lord a Visite, we having been acquaintance of above fifty years standing, and bred together in *Maudlin Colledge in Oxford*. When I came to my Lord of *Bedford*, and had administred that comfort, that was fit for one Christian to give another in that distress, I was ready to leave him, and my Lord *Howard* came in. It was upon the Friday before my Lord *Howard* was taken, he was taken (as I take it) upon Sunday or Munday, my Lord *Howard* fell into the same Christian Office that I had been just discharging, to compassionate my Lords affliction, to use Arguments to comfort and support him under it, and told him, he was not to be troubled, for he had a discreet wife and a vertuous Son, and he could not be in any such Plot; (I think that was the word he used at first, though he gave another name to it afterward) and his Lordship might therefore well expect a good Issue of that business, and he might believe

his Son secure, for he believed he was neither guilty, nor so much as to be suspected. My Lord proceeded further, and did say, that he knew of no such barbarous Design (I think he called it so in the second place) and could not charge my Lord *Russel* with it, nor any body else. This was the effect of what my Lord *Howard* said at that time, and I have nothing to say of my own knowledge more than this; but to observe that I was present when the Jury did put my Lord *Howard* particularly to it; what have you to say to what my Lord *Anglesey* testifies against you? My Lord, I think did in three several places give a short account of himself, and said it was very true, and gave them some further account why he said it, and said, he should be very glad it might have been advantageous to my Lord *Russel*.

Col. *Sidney*. My Lord of *Clare*, I desire to know of my Lord of *Clare*, what my Lord *Howard* said concerning this Plot and me.

Lord *Clare*. My Lord, a little after Col. *Sidney* was taken, speaking of the times, he said, that if ever he was questioned again, he would never plead, the quickest dispatch was the best, he was sure they would have his life, tho he was never so innocent; and discoursing of the late Primate of *Ardmaghs* Prophecy, for my part says he, I think the Persecution is begun, and I believe it will be very sharp; but I hope it will be short, and I said, I hoped so too.

Mr. *Att. Gen.* What Answer did your Lordship give to it?

Lord *Clare*. I have told you what I know, my Lord is too full of discourse for me to answer all he says; but for Col. *Sidney*, he did with great asseverations assert, that he was as innocent as any man breathing, and used great Encomiums in his praise, and then he seemed to bemoan his misfortune, which I thought real, for never was any man more engaged to another, than he was to Col. *Sidney*, I believe. Then I told, they talked of Papers that were found, I am sure says he, they can make nothing of any Papers of his.

Mr. *Att. Gen.* When was this?

Lord *Clare*. This was at my House the beginning of July.

Mr. *Att. Gen.* How long before my Lord *Howard* was taken?

Lord *Clare*. About a Week before.

Mr. *Att. Gen.* I would ask you, my Lord, upon your honour, would not any man have said as much that had been in the Plot?

Lord *Clare*. I can't tell, I know of no Plot.

Col. *Sidney*. Mr. *Philip Howard*.

Mr. *J. Wythins*. What do you ask him?

Col. *Sidney*. What you heard my Lord *Howard* say concerning this pretended Plot, or my being in it?

Mr. *Phil. Howard*. My Lord, when the Plot first brake out, I used to meet my Lord *Howard* very often at my Brothers House, and coming one day from *Whitehall*, he asked me what News? I told him, my Lord, says I, there are abundance of people that have confessed the horrid design of Murthering the King and the Duke. How, says he, is such a thing possible? says I, 'tis so, they have all confessed it. Says he do you know any of their names? yes, says I, I have heard their names. What are their names, says he? why, says I, Collonel *Romsey*, and Mr. *West*, and one *Walcot* and others, that are in the Proclamation (I can't tell whether *Walcot* was in hold) says he, 'tis impossible such a thing can be; says he, there are in all Countreys, people that wish ill to the Government, and says he, I believe there are some here; but says he, for any man of Honour, Interest or Estate, to go about it, is wholly impossible. Says I, my Lord, so it is, and I believe it. Says I, my Lord, do you know any of these people? no, says he, none of them; only one day, says he, passing thro the *Exchange*, a man saluted me, with a Blemish upon his Eye, and he embraced me, and wished me all happiness; says he, I could not call to mind who this man was: but afterwards, I recollected my self that I met him at my Lord *Shaftsbury*, and heard afterwards, and concluded his name to be—

be _____ his at whose House the King was to be assassinated _____

Mr. Att. Gen. Rombald.

Mr. Howard. Ay, *Rombald.* My Lord, may I ask if my Lord *Howard* be here?

L. C. J. He is there behind you.

Mr. Howard. Then he will here me. My Lord, says I, what does your Lordship think of this business? Says he, I am in a maze; says I, if you will be ruled by me, you have a good opportunity to address to the King, and all the discontented Lords, as they are called; and to shew your Detestation and Abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, You have put one of the best Notions in my head that ever was put. Says I, You are a very good Pen-man, draw up the first Address (and I believe, I was the first that mentioned an Address, you have had many an one since, God send them good success) says he, I am sorry my Lord of *Effex* is out of Town, he should present it. But, says I, here is my Lord *Russel*, my Lord of *Bedford*, my Lord of *Clare*, all of you that are disaffected, and so accompted, go about this business, and make the Nation happy, and the King happy. Says he, will you stay till I come back? Ay, says I, if you will come in any time; but he never came back while I was there. The next day, I think, my Lord *Russel* was taken, and I came and found him at my Brothers House again (for there he was day and night) says he, Cofin, what News? Says I, my Lord *Russel* is sent to the *Tower*. We are all undone then, says he, Pray, says he, go to my Lord Privy Seal, and see if you can find I am to be taken up; says he, I doubt 'tis a Sham Plot, if it was a true Plot, I should fear nothing; says I, What do you put me to go to my Lord Privy Seal for? He is one of the Kings Cabinet Counsel, do you think he will tell me? I won't go; but, says I, if you are not guilty, why would you have me go to inquire? Why, says he, because I fear 'tis not a true Plot, but a Plot made upon us; and therefore, says he, there is no man free. My Lord, I can say no more as to that time, (and there is no man that sits here, that wishes the King better than I do.) The next thing I come to, is this, I came the third day, and he was mighty sad and melancholy, that was when Collonel *Sidney* was taken: says I, Why are you melancholy, because Coll. *Sidney* is taken? Says I, Coll. *Sidney* was a man talked of before, why, you were not troubled for my Lord *Russel*, that is of your Blood; says he, I have that particular Obligation from Collonel *Sidney*, that no one man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, you would have us undertake for all the people that hear you? I think you have spoken very materially, and I will observe it by and by to the Jury.

Col. Sidney. Pray call Dr. *Burnet*.

M. Just. Walcut. What do you ask Dr. *Burnet*.

Col. Sidney. I have only to ask Dr. *Burnet*, whether after the News of this pretended Plot, my Lord *Howard* came to him? and what he said to him?

Dr. Burnet. My Lord, the day after this Plot brake out my Lord *Howard* came to see me, and upon some discourse of the Plot, with Hands and Eyes lifted up to Heaven, he protested he knew nothing of any Plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing.

My Lord Paget was sent for at the Prisoners request, being in the Hall.

Col. Sidney. My Lord, I desire *Joseph Ducas* may be called, (who appeared, being a French man.)

Col. Sidney. I desire to know, whether he was not in my House when my Lord *Howard* came thither, a little after I was made a prisoner, and what he said upon it?

Ducas. Yes, my Lord, my Lord *Howard* came the day after the Collonel *Sidney* was taken, and he asked me, Where was the Collonel *Sidney*? and I said, he was taken

by

Algernon Sidney, Esquire.

by an Order of the King ; and he said, Oh Lord ! what is that for ? I said, they have taken Papers ; he said, is some Papers left ? Yes, have they taken something more ? No, well you must take all the things out of the house, and carry them to some you can trust : I dare trust no body, says he ; I will lend my Coach and Coachman I said, if the Col. *Sidney* will save his Goods ; he save them, if not, 'tis no matter. A little after the Lord *Howard* came in the house of Collonel *Sidney* about eleven a Clock at Night. When he was in, I told him, what is this ? They talk of a Plot to kill the King and the Duke, and I told him, they spake of one general Insurrection ; and I told him more, that I understood that Collonel *Sidney* was sent into *Scotland* : when my Lord *Howard* understood that, he said, God knows, I know nothing of this, and I am sure if the Collonel *Sidney*, was concerned in the matter, he would tell me something, but I know nothing. Well my Lord, I told him, I believe you are not safe in this house, there is more danger here then in another place. Says he, I have been a Prisoner, and I had rather do any thing in the World than be a Prisoner again. Then my Lord *Pagett* came into the Court.

Col. *Sidney*. Pray my Lord be pleased to tell the Court, if my Lord *Howard* has said any thing to you concerning this late pretended Plot, or my being any party in it.

Lord *Pagett*. My Lord, I was *Subpœna'd* to come hither, and did not know upon what account. I am obliged to say, my Lord *Howard* was with me presently after the breaking out of this Plot, and before his appearing in that part which he now Acts, he came to me ; and I told him, That I was glad to see him abroad, and that he was not concerned in this disorder. He said, he had Joy from several concerning it, and he took it as an injury to him, for that it looked as if he were Guilty. He said, he knew nothing of himself, nor any body else. And though he was free in discourse, and free to go into any Company indifferently ; yet he said, he had not seen any body that could say any thing of him, or give him occasion to say any thing of any body else.

Col. *Sidney*. Mr. *Edward Howard*.

Mr. *Ed. Howard*. Mr. *Sidney*, what have you to say to me ?

Col. *Sidney*. My Lord, I desire you would ask Mr. *Edward Howard* the same thing, what Discourse he had with my Lord *Howard* about this Plot ?

L. C. J. Mr. *Howard*, Mr. *Sidney* desires you to tell what Discourse you had with my Lord *Howard* about this Plot.

Mr. *E. Howard*. My Lord, I have been for some time very intimate with my Lord, not only upon the account of our Alliance, but upon a strict Intimacy and Correspondence of Friendship, and I think, I was as much his as he could expect from that Alliance. I did move him, during this time, to serve the King upon the most honourable account I could, but that proved ineffectual : I pass that, and come to the business here. As soon as the Plot broke out, my Lord having a great intimacy with me, expressed a great detestation and surprizing in himself to hear of it, wherein my Lord *Howard* assured me under very great Asseverations, that he could neither accuse himself, nor no man living. He told me moreover, That there were certain persons of Quality whom he was very much concerned for, that they should be so much reflected upon or troubled, and he condoled very much their condition both before and after they were taken. My Lord, I believe in my Conscience, he did this without any mental Reservation or Equivocation, for he had no reason to do it with me. I add moreover, if I have any sense of my Lords Disposition, I think if he had known any such thing, he would not have stood his being taken, or made his application to the King in this manner, I am afraid nor so suitable to his Quality.

L. C. J. No Reflections upon any body.

Mr. *Howard*. My Lord, I reflect upon no body, I understand where I am, and have a respect for the place ; but since your Lordship has given me this occasion, I must needs say, That that reproof that was accidentally given me at the Tryal of

The Tryal of

my Lord *Russel*, by reason of a weak memory, made me omit some particulars I will speak now, which are these, and I think they are material; My Lord upon the discourse of this Plot did further assure me, that it was certainly a Sham, even to his knowledge; how, my Lord, says I, do you mean a Sham? Why, says he, such an one, Cozen, as is too black for any Minister of publick Employment to have devised, but, says he, it was forged by people in the dark, such as Jesuites and Papists, and, says he, this is my Conscience; says I, my Lord, if you are sure of this thing, then pray, my Lord, do that honourable thing that becomes your Quality, that is, give the King satisfaction as becomes you; pray make an Address under your hand to the King, whereby you express your Detestation and Abhorrence of this thing: says he, I thank you for your Counsel, to what Minister, says he, shall I apply my self? I pitched upon my Lord *Hallifax*, and I told him of my Lords desire, and I remember my Lord *Howard* named the Duke of *Monmouth*, my Lord of *Bedford*, the Earl of *Clare*, and he said he was sure they would do it; that he was sure of their Innocence, and would be glad of the occasion, and I went to my Lord *Hallifax*, and told him that my Lord was willing to set it under his hand, his detestation of this Plot, and that there was no such thing to his knowledge. My Lord *Hallifax* very worthily received me, says he, I will introduce it; but my Lord *Russel* being taken, this was laid aside, and my Lord gave this reason. For, says he, there will be so many People taken, they will be hindred. I must needs add from my Conscience, and from my Heart before God and Man, that if my Lord had spoken before the King, sitting upon his Throne, abating for the solemnity of the presence I could not have more believed him, from that assurance he had in me. And I am sure from what I have said, if I had the honour to be of this Gentlemans Jury I would not believe him.

L. C. J. That must not be suffered.

Mr. Att. Gen. You ought to be bound to your good behaviour for that.

L. C. J. The Jury are bound by their Oaths to go according to their Evidence, they are not to go by men's conjectures.

Mr. Howard. May I go my Lord?

Mr. Att. Gen. My Lord *Howard* desires he may stay, we shall make use of him.

Col. Sidney. My Lord, I spake of a Mortgage that I had of my Lord *Howard*, I don't know whether it is needful to be proved; but it is so.

Lord Howard. I confess it.

Col. Sidney. Then my Lord, here is the other point, He is under the fear, that he dare not but say what he thinks will conduce towards the gaining his Pardon; and that he hath expressed that he could not have his Pardon, but he must first do this drudgery of Swearing. I need not say, that his Son should say, That he was sorry his Father could not get his Pardon unless he did swear against some others.

Col. Sidney. Call Mr. *Blake*, (who appeared) My Lord, I desire he may be asked, whether my Lord *Howard* did not tell him that he could not get his Pardon yet, and he could ascribe it to nothing, but that the drudgery of swearing must be over first.

Then my Lord Chief Justice asked the Question.

Mr. Blake. My Lord, I am verry sorry I should be called to give a publick account of a private Conversation, how it comes about I don't know. My Lord sent for me about six Weeks ago, to come and see him. I went and we talked of News, I told him I heard nobody had their Pardon, but he that first discovered the Plot; he told me no, but he had his Warrant for it. And, says he, I have their Word and Honour for it; but says he, I will do nothing in it till I have further order, and says he, I hear nothing of it. and I can ascribe it to no other reason; but I must not have my Pardon till the drudgery of swearing is over. These words my Lord said, I believe my Lord won't deny it.

Then Mr. Sidney called Mr. Hunt and Burroughs, but they did not appear.

Col. Sidney.

Col. Sidney. 'Tis a hard case they don't appear: One of them was to prove that my Lord Howard said he could not have his Pardon till he had done some other Jobs.

L. C. J. I can't help it, if you had come for assistance from the Court I would willingly have done what I could.

Then Col. Sidney mentioned the Duke of Buckingham, but he was informed he was not subpœna'd.

Col. Sidney. Call Grace Tracy and Elizabeth Penwick (who appeared) I ask you only what my Lord Howard said to you at my House concerning the Plot, and my being in it?

Tracy. Sir he said that he knew nothing of a Plot he protested, and he was sure Colonel Sidney knew nothing of it. And he said, if you knew any thing of it, he must needs know of it, for he knew as much of your concerns as any one in the World.

Col. Sidney. Did he take God to Witne's upon it? Tracy. Yes.

Col. Sidney. Did he desire my Plate at my House?

Tracy. I can't tell that, he said the Goods might be sent to his house.

Col. Sidney. Penwick, What did my Lord Howard say in your hearing concerning the pretended Plot, or my plate carrying away?

Penwick. When he came he asked for your Honour; and they said your Honour was taken away by a man to the Tower for the Plot, and then he took God to witne's he knew nothing of it, and believed your Honour did not neither. He said he was in the Tower two years ago, and your Honour, he believed, saved his life.

Col. Sidney. Did he desire the Plate?

Penwick. Yes, and said it should be sent to his House to be secured. He said it was only Malice.

Mr. Wharton stood up.

Mr. Wharton. 'Tis only this I have to say, That if your Lordship pleases to shew me any of these Sheets of Paper, I will undertake to imitate them in a little time that you shan't know which is which. 'Tis the easiest hand that ever I saw in my life.

Mr. Att. Gen. You did not write these Mr. Wharton?

Mr. Wharton. No; but I will do this in a very little time if you please.

L. C. J. Have you any more Witnesses? Col. Sidney. No, my Lord.

L. C. J. Then apply your self to the Jury.

Col. Sidney. Then this is that I have to say. Here is a huge Complication of Crimes laid to my Charge: I did not know at first under what Statute they were, now I find 'tis the Statute of 25. of Ed. 3. This Statute hath two branches; one relating to War, the other to the Person of the King. That relating to the Person of the King makes the Conspiring, Imagining, and Compassing his Death, criminal. That concerning War is not unless it be Levyed: Now my Lord I cannot imagine to which of these they refer my Crime, and I did desire your Lordship to explain it. For to say that a man did meet to Conspire the King's Death, and he that gives you the account of the business does not speak one word of it, seems extravagant; for Conspiracies have ever their denomination from that point to which they tend; as a Conspiracy to make false Coin infers Instruments and the like. A Conspiracy to take away a Woman to kill, or rob, are all directed to that end. So Conspiring to kill the King, must immediately aim at killing the King. The King hath two Capacities Natural and Politick, that which is the Politick can't be within the Statute, in that sense he never dies, and 'tis absurd to say it should be a fault to kill the King that can't die: So then it must be the natural sense it must be understood in, which must be done by Sword, by Pistol, or any other way. Now if there be not one word of this, then that is utterly at an end, though the Witness had been good. The next point is concerning Levying of War. Levyng of War is made Treason there, so to be proved by Overt Act, but an Overt Act of that never was or can be pretended here. If the War be not levyed 'tis not within the Act, for Conspiring to levy War

is not in the Act. My Lord, there is no man that thinks that I would kill the King that knows me, I am not a man to have such a Design, perhaps I may say I have saved his Life once. So that it must be by Implication, that is, it is first imagined, that I intended to raise a War, and then 'tis imagined that War should tend to the Destruction of the King. Now I know that may follow, but that is not natural or necessary, and being not natural or necessary, it can't be so understood by the Law. That it is not is plain; for many Wars have been made, and the Death of the King has not followed. *David* made War upon *Saul*, yet no body will say he sought his Death, he had him under his power and did not kill him, *David* made War upon *Ishbosheth*, yet did not design his Death; and so in *England* and *France* Kings have been taken Prisoners, but they did not kill them. King *Stephen* was taken Prisoner, but they did not kill him. So that 'tis two distinct things, to make War, and to endeavour to kill the King. Now as there is no manner of pretence that I should endeavour to kill the King directly, so it can't be by inference, because 'tis Treason under another species. I confess, I am not fit to argue these points, I think I ought to have Counsel, but if you won't allow it me I can't help it; but these things are impossible to be jumbled up together. Now I say this, if I am not under the first Branch, if not directly, I can't be by Implication, tho' I did make War, I can't be said to conspire the Death of the King, because 'tis a distinct Species of Treason, and my Lord *Coke* says, 'tis the overthrow of all Justice to confound *Membra dividenda*; now if the making of War can't be understood to be a conspiring the Death of the King, then I am not guilty of this Indictment, but here, my Lord, is neither conspiring the death of the King, nor making War, nor conspiring to make War. Besides, I say, 'tis not the best mans Evidence here would be good in this Case, because the Law requires two. The next thing is the business of *Aaron Smith*, which my Lord tells so imperfectly, and so meely conjectural, that there is nothing in it, but his *Rhetorick* in setting it out. He tells you of a Letter sent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no: So that I think we may lay that aside as the other, as things nothing in them at all. Then says *Mr. Attorney*, These *Scotch* Gentlemen are come to Town, I profess I never heard the Names of one of them till he named them to me in the *Tower*. I have not sent my self, nor writ a Letter into *Scotland* never since the Year 59. nor do I know one man in *Scotland* to whom I can write, or from whom I ever received one. I returned into *England* in the year 77. and since that time have not writ nor received a Letter from *Scotland*. Then some Gentlemen came hither, What is that to me? I never saw one of the *Campbells* in my life, nor *Monro*; if any one can prove I have had Communication with them, I will be glad to suffer. Then here are Papers, if any thing is to be made of them, you must produce the whole; for 'tis impossible to make any thing of a part of them. You ask me, What other passage I would have read, I don't know a passage in them, I can't tell whether it be good or bad. But if there are any Papers found ('tis a great doubt whether they were found in my Study or no, or whether they be not counterfeit; but though that be admitted that they were found in my house) the Hand is such that it shews they have been writ very many years. Then that which seems to be an account of the Sections and Chapters that is but a scrap, and what if any body had, my Lord, either in my own Hand, or anothers found Papers that are not well justifiable, is this Treason? Does this imagine the Death of the King? Does this reach the Life of the King? If any man can say I ever printed a sheet in my life, I will submit to any Punishment. Many others, my Lord, they write, and they write what comes into their heads. I believe there is a Brother of mine here has forty Quire of Paper written by my Father, and never one sheet of them was published, but he writ his own mind to see what he could think of it at another time, and blot it out again, may be. And I my self, I believe, have burned more Papers of my

my own writing than a Horse can carry. So that for these Papers I can't answer for them. There is nothing in it, and what Concatenation can this have with the other design that is in it self nothing, with my Lords Select Counsel selected by no body to pursue the design of my L. *Shaftsbury*? And this Council that he pretends to be set up for so great a business, was to be adjusted with so much fineness, so as to bring things together, What was this fineness to do? (taking it for granted which I don't.) This was nothing (if he was a credible Witness) but a few men talking at large of what might be or not be, what was like to fall out without any manner of intention or doing any thing. They did not so much as inquire, whether there was Men in the Country, Arms, or Ammunition. A War to be made by five or six Men, not knowing one another, not trusting one another. What said Dr. *Cox*, in his Evidence at my L. *Russels* Trial, of my L. *Russels* trusting my L. *Howard*? he might say the same of some others. So that, my Lord, I say, these Papers have no manner of coherence, no dependance upon any such design. You must go upon conjecture upon conjecture; and after all, you find nothing but only Papers, never perfect, only scraps, written many years ago, and that could not be calculated for the raising of the People. Now pray what Imagination can be more vain than that? and what man can be safe, if the Kings Counsel may make such (whimsical I won't say but) groundless Constructions? Mr. Attorney says the Plot was broken to the Scots (God knows we were neither broken nor joined) and that the *Campbells* came to Town about that time I was taken, and in the mean time my Lord *Howard*, the great Contriver of all this Plot, who was most active; and advised the business that consisted of so much fineness; he goes there and agrees of nothing: and then goes into *Essex* upon great important business greater than the War of *England* and *Scotland*, to what purpose? To look after a little pimping Mannour, and what then? Why then it must be laid aside, and he must be idle five Weeks at the Bath, and there is no inquiring after it. Now I desire your Lordship to consider, whether there be a possibility for any men, that have the sense of Porters & Grooms, to do such things, as he would put upon us. I would only say this, If Mr. Attorney be in the right, there was a Combination with the Scots, and then this Paper was writ; for those that say I did it, say, I was doing of it then, and by the Notes, there is work enough for four or five years, to make out what is mentioned in those scraps of Paper, and this must be to kill the King. And I say this, my Lord, that under favour, for all constructive Treasons you are to make none, but to go according to plain Proof, and that these constructive Treasons belong only to Parliament, and by the immediate Proviso in that Act. Now, my Lord, I leave it to your Lordship to see whether there is in this any thing that you can say is an Overt Act of Treason mentioned in 25. E. 3. If it be not plainly under one of the two Branches, That I have endeavoured to kill the King, or levyed War, then 'tis matter of Construction, and that belongs to no Court but the Parliament. Then my Lord this hath been adjudged already in *Throgmortons* Case. There is twenty Judgments of Parliament, the Act of 13 Eliz. that says—— I should have some body to speak for me, my Lord.

L. C. J. We are of another Opinion.

Mr. Just. Wythins. If you acknowledge the matter of Fact, you say well.

Col. Sidney. I say there are several Judgments of Parliament, that do shew what ever is Constructive Treason does not belong to any private Court, that of 1 Mary. 1 E. 6. 1 Eliz. 5 Eliz. 18. another 13 Car. shew this. Now my Lord, I say that the business concerning the Papers, 'tis only a similitude of hands, which is just nothing. In my Lady *Carrs* Case, it was resolved to extend to no criminal Cause, if not to any, then not to the greatest, the most Capital. So that I have only this to say, That I think 'tis impossible for the Jury to find this matter, for the first point you proved by my Lord *Howard*, that I think is no Body, and the last concerning the Papers, is only imagination from the similitude of hands. If I had published it, I must have



have answered for it, or if the thing had been whole and mine, I must have answered for it; but for these scraps never shewed any Body, That I think does not at all concern me. And I say, if the Jury should find it (which is impossible they can) I desire to have the Law reserved unto me.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury. The Evidence hath been long; but I will endeavour to repeat it, as faithfully as I can. The Crime the Prisoner stands accused for, is compassing and imagining the Death of the King. That which we go about to prove that compassing and imagining by, is by his meeting and consulting how to raise Arms against the King, and by plain matter in writing under his own hand, where he does affirm, it is lawful to take away and destroy the King. Gentlemen I will begin with the first part of it, the Meeting and Consultation to raise Arms against the King. The Prisoner Gentlemen hath endeavoured to avoid the whole force of this Evidence; by saying, that this in point of Law can't affect him, if it were all proved; for this does not amount to a proof of his compassing and imagining the Death of the King, and he is very long in interpreting the Act of Parliament to you, of 25 E. 3. and dividing of it into several Members or Branches of Treason, and does insist upon it, that though this should be an offence within one Branch of that Statute, yet that is not a proof of the other, which is the Branch he is proceeded upon, that is the first Clause against the compassing and imagining the Death of the King. And, says he, conspiring to Levy War, is not so much as one Branch of that Statute, but it must be War actually Levied. This is a matter he is wholly mistaken in, in point of Law. It hath been adjudged over and over again, That an Act which in one Branch of that Statute may be an Overt Act to prove a man Guilty of another Branch of it. As Levying War is an Overt Act to prove a man Guilty of conspiring the Death of the King. And this was adjudged in the Case of Sir *Henry Vane*, so is meeting and consulting to raise Arms. And reason does plainly speak it to be so; for they that conspire to raise War against the King, can't be presumed to stop any where, till they have Dethron'd or Murdered the King. Gentlemen I won't be long in citing Authorities, it hath been settled lately by all the Judges of *England*, in the Case of my Lord *Russel*, who hath suffered for this Conspiracy. Therefore that point of Law will be very plain against the Prisoner. He hath mentioned some other things, as that there must be two Witnesses to every particular Fact, and one Witness to one Fact, and another to another is not sufficient, it hath been very often objected, and as often over-ruled: It was over-ruled solemnly in the Case of my Lord *Stafford*. Therefore if we have one Witness to one Overt Act, and another to another, they will be two Witnesses in Law to convict this Prisoner. In the first part of our Evidence, we give you an account of the general Design of an Insurrection that was to have been, that this was contrived first, when my Lord *Shaftsbury* was in *England*, that after my Lord *Shaftsbury* was gone, the business did not fall; but they thought fit to revive it again, and that they might carry it on the more steadily, they did contrive a Council among themselves of six, whereof the Prisoner at the Bar was one. They were the Duke of *Monmouth*, my Lord of *Essex*, my Lord *Howard*, my Lord *Russel*, the Prisoner at the Bar, and Mr. *Hambden*. This Council they contrived to manage this affair, and to carry on that Design, that seemed to fall by the Death of my Lord of *Shaftsbury*, and they met; this we give you an account of, first by Witnesses that gave you an account in general of it. And though they were not privy to it, yet they heard of this Council, and that Colonel *Sidney* was to be one of this Council. This Gentlemen, if it had stood alone by itself, had been nothing to affect the Prisoner at all. But this will shew you, that this was discours'd among them that were in this Conspiracy. Then my Lord *Howard* gives you an account that first the Duke of *Monmouth*, and he, and Colonel *Sidney* met, and it was agreed to be necessary to have a Council that should consist of six

or seven; and they were to carry it on. That the Duke of *Monmouth* undertook to dispose my Lord *Russel* to it, and Collonel *Sidney* to dispose the Earl of *Essex*, and Mr. *Hambden*: that these Gentlemen did meet accordingly, and the substance of their discourse was, taking notice how the design had fallen upon the Death of my Lord *Shaftsbury*, that it was fit to carry it on before mens Inclinations were cool, for they found they were ready to it, and had great reason to believe it, because this being a business communicated to so many, yet for all that it was kept very secret, and no body had made any mention of it, which they looked upon as a certain argument that men were ready to ingage in it. This encouraged them to go on in this Conspiracy. Then when the six met at Mr. *Hambden's* house, they debated concerning the place of Rising, and the Time, the Time they conceived must be suddenly, before Mens minds were cool, for now they thought they were ready and very much disposed to it, and for place, they had in debate whether they should rise first in the Town or in the Country, or both together. And for the Persons they thought it absolutely necessary for them to have the United Counsels of *Scotland* to join with them, and therefore they did refer this matter to be better considered of another time, and they met afterwards at my Lord *Russel's* House in *February*, and there they had discourse to the same purpose. But there they began to consider with themselves, being they were to destroy this Government, what they should set up in the room of it; to what purpose they ingaged. For they did very wisely consider, if this be only to serve a turn and to make one Man great, this will be a great hinderance in their Affair, therefore they thought it was necessary to ingage upon a publick account, and to resolve all into the authority of a Parliament, which surely they either thought to force the King to call, or otherwise that the People might call a Parliament if the King refused, and so they to choose their own Heads. But still they were upon this point, That it was necessary for their Friends in *Scotland* to have their Counsels united with them, and in order to that, it was necessary to contrive some way to send a Messenger into *Scotland*, to bring some Men here to treat and consult about it, and Col. *Sidney* is the man that engages to send this Messenger, and he had a man very fit for his turn, that is, *Aaron Smith*, whom he could confide in, and him he undertook to send into *Scotland*. This Messenger was to fetch my Lord *Melvin*, the two *Campbells*, and Sir *John Cockram*. Col. *Sidney* as he ingaged to do this, so afterwards he did shew to my Lord *Howard* Mony, which he affirmed was for that business, he says it was a Sum of about sixty Guineys, and he believes he gave it him, for that Collonel *Sidney* told him, *Aaron Smith* was gone into *Scotland*, That the pretence was not bare-faced to invite them over to consult of a Rebellion, but to consult about the business of *Carolina*, being a Plantation for the persecuted Brethren, as they pretended in *Scotland*. Gentlemen, these Scotchmen that were thus sent for over, they came accordingly, that is, the two *Campbells*, and Sir *John Cockram*, and the discourse with Sir *Andrew Foster* was according to this Cant that was agreed on before hand, concerning a Plantation in *Carolina*. This was that that was pretended for their coming hither; but the true Errand was, the business of the Insurrection intended. Gentlemen, that they came upon such a design, is evident from the circumstances; they came about the time the business brake out, and in that time suspiciously changing their Lodging, they were taken making their escape, and this at a time before it was probable to be known abroad, that these men were named as part of the Conspirators. These things do very much verifie the Evidence my Lord *Howard* hath given, and there is nothing has been said does invalidate it. The sending of *Aaron Smith* into *Scotland*, and his going, and the coming of these men, and their endeavouring to make their escape, are mighty concurrent Evidences with the whole Evidence my Lord *Howard* has given. Now, what objections are made against this Evidence? truly none at all. Here are persons of great Quality

have

have given their Testimony, and they do not impeach my Lord *Howard* in the least; but some do extremely confirm the Truth of my Lord *Howard*. My Lord *Anglesey* gives you an account of a Discourse at my Lord of *Bedfords*, That my Lord *Howard* came in, and that my Lord *Howard* should there comfort my Lord of *Bedford*, and enlarge in the Commendations of his Son, and say he was confident he knew nothing of the Design, and he must be innocent. Gentlemen this is the nature of the most part of the Evidence. My Lord of *Clare* his Evidence is much the like, that is, his denying that he knew of any Plot. Now here is my Lord *Howard* under a guilt of High Treason; for he was one of those Conspirators not yet discovered, nor no Evidence of any discourse leading to any thing that should give occasion to him to protest his Innocency: and, says he, I know nothing of the Plot. You would have wondered if he should have been talking in all places his knowledge, and declaring himself: his denying of it under the guilt when he was not accused, is nothing to his Confession when he comes to be apprehended and taken for it. Here Mr. *Philip Howard* says, he had several discourses with him about this business upon the breaking out of the Plot, and that he advised him to make an Address, and that this was a thing that would be very acceptable, and very much for their Vindication; and my Lord *Howard* (he says) thanked him for his very good advice, and said, he would follow it: and presently after when my Lord *Russel* was apprehended, Mr. *Howard* tells him the news that my Lord *Russel* was apprehended; this was sudden to him. And what says he? We are all undone. When my Lord *Russel* that was one of this Counsel that was a secret Counsel, and could not be traced but by some of themselves, when he is apprehended, then he falls out into this expression, *We are all undone*. This is an argument my Lord *Howard* had a guilt upon him. For why were they all undone, that my Lord *Russel* was apprehended, any more than upon the apprehending the rest? Yes, because my Lord was one of the six, and now 'twas come to the knowing of that part of the Conspiracy. It was traced to the Council of Six, which in all likelihood would break the neck of the Design. Now though he put it off afterwards, saying, *I believe it is a Sham Plot*, yet this was but a trivial put off. And then, when Collonel *Sidney* is taken, the same Witness, Mr. *Howard*, tells you, my Lord was very sad and melancholy; for then he had greater reason to lie under an apprehension of being detected. Therefore Gentlemen, this will rather confirm the truth of the Evidence, than any way impeach it. Then (for I would repeat it all, though I think it hath no great weight in it) Doctor *Burnet* says, That after the Plot my Lord *Howard* pretended he knew of no Plot. This is no more than was testified by the other Lords before; and all it imports, is, that my Lord did not discover himself to Doctor *Burnet*. But I would fain know, if my Lord had told Dr. *Burnet*, had it not argued that he had great confidence in him, that he thought him a man fit to be intrusted with such a secret: and unless the Doctor desires to be thought such a man, himself must own, 'tis no objection, that my Lord *Howard* did not tell him. *Ducas's* Testimony is no more neither, that he protested he was innocent, and believed Collonel *Sidney* was innocent; and this was before my Lord *Howard* discovered any thing of this Plot. Then Collonel *Sidney* objects, This is by Malice, my Lord *Howard* owes him Money, and seeks to pay his Debts by taking away his Life; and in further prosecution of this Malice, would have seized upon his Goods. But the Evidence does not receive such construction, for my Lord *Howard* only offered Collonel *Sidney* the Civility of his House to protect his Plate and Goods. Now Gentlemen, there were two other Witnesses, my Lord *Pager*, and Mr. *Edward Howard*; but they say no more than the rest of them, that he did protest his innocency, and Mr. *Howard* says, he advised him to make an address to the King. This, Gentlemen, I repeat, not that it is material, but for no other reason, than Because Collonel *Sidney* had produced it; and so we are to think, he intended to make

make some use of it: but I can't see any inference to be drawn from it. There is one Witness more, and that is Mr. *Blake*, to the credit of my Lord *Howard*, who comes here, and says, That when he discoursed about a Pardon, my Lord should say, That he had a Warrant for his Pardon, but that he had not yet passed it, and could not yet; and he apprehended the reason was, because the drudgery of Swearing was not over. But this is but what my Lord *Howard* had conjectured: First, it does not appear, that there is any promise of Pardon at all to my Lord *Howard*, on any terms imposed on him. In the next place, whatever expectation he has of a Pardon, he can't reasonably hope for it without making a clear discovery of all he knows: For to stifle his Evidence he has given, is not a way to deserve a Pardon of his Prince. Therefore, Gentlemen, whatever expressions were used, though he call it the drudgery of Swearing, however unwilling he is to come to it, and though he gives it very many hard names, and might think it very harsh to come and own himself to be one of the Conspirators, it might be irksome, yet none of them tell you, That my Lord *Howard* should say, that what he had said was not true. Now he has come and given his Evidence, and you have heard all these objections against it, and not one of them touch it in the least.

I come in the next place to the other part of the Evidence, The Papers found in Collonel *Sidney's* House. And in the first place he objects, They can't affect him; for, says he, there is no proof they were found in my House, no proof they were written by me; for comparison of Hands, that is nothing; and if they were proved to be mine, 'tis nothing at all to the purpose: they are an Answer to a Polemical Discourse, wherewith he entertained himself privately in his Study. Why you have observed, I know, that Sir *Philip Lloyd* in the first place swears, that by Warrant from the Secretary he searched his House, and he found the Papers lying upon Collonel *Sidney's* Table in his Study, when he came in there; and there is no ground nor colour for you to suspect otherwise than that they were there, and he found them there. For the surmise of the Prisoner at the Bar, that they might be laid there, 'tis so foreign and without ground, that by and by you will think there is nothing at all in it. In the next place we prove Collonel *Sidney's* Hand, and that by as much proof as the thing is capable of; such a proof as in all cases hath been allowed; and that is, for men to come and know that are acquainted with the Hand-writing, and Swear they know his Hand-writing, and they believe this to be his Hand. You have heard from Mr. *Sheppard*, a man that used to transact business for him, pay money for him; and Mr. *Cook*, and Mr. *Cary*, men of known Credit in the City of *London*, that have the like dealings with Collonel *Sidney*, and they Swear, this is his Hand-writing, as they verily believe. So that, Gentlemen, this proof to you of Collonel *Sidney's* Hand-writing, does verifie Sir *Philip Lloyd*, That these Papers must be found there, if Collonel *Sidney* writ them: and then this being found that they were writ by him, the next thing will be, How far this will be an Evidence to prove his compassing and imagining the Death of the King. Compassing and imagining the Death of the King, is the Act of the mind, and is Treason whilst it remains secret in the Heart, though no such Treason can be punish'd, because there is no way to prove it; but when once there is any Overt Act, that is, any thing that does manifest and declare such intention, then the Law takes hold of it, and punishes it as High-Treason.

Now after this Evidence, I think no man will doubt, whether it was in the heart of the Prisoner at the Bar to destroy the King. But first he objects, That this is a part of a Book, and unless you take the whole, nothing can be made of it: As it is in wresting of Texts of Scripture, says he, you may as well say, That *David* says there is no God, because *David* hath said, *The fool hath said in his heart there is no God*. But Gentlemen, the application will not hold; for you see a long Discourse hath been read to you, a continued threed of Argument; 'tis not one Proposition, but an

whole series of Argument: These are the Positions, *That the King derives all his Power from the People; That 'tis originally in the People, and that the measure of Subjection must be adjudged by the Parliament; and if the King does fall from doing his Duty, he must expect the People will exact it.* And this he has laid down as no way prejudicial to him; for, says he, *The King may refuse the Crown, if he does not like it upon these terms.* But, says he, *if he does accept it, he must expect the performance will be exacted, or revenge taken by those he hath betrayed.* Then next, he sets up an objection, and then argues against it: *ay, but shall the People be judge in their own Cause?* And thus he answers it, *it must be so, for is not the King a Judge in his own Cause? How can any man else be Tryed, or Convicted of any Offence, if the King may not be Judge in his own Cause; for no judge by a mans self, or by his Deputy, is the same thing, and so all Crime against the King can't be punished.* And then he takes notice of it as a very absurd Position, *That the King shall judge in his own Cause, and not the People.* That would be to say, *The Servant, entertained by the Master, shall judge the Master, but the Master shall not judge the Servant.* Gentlemen, after this sort of Argument he comes to this settled Position, *We may therefore, says he, change, or take away Kings, (without breaking any Toke, or that is made a Toke;): the injury is therefore in imposing the Toke, and there can be none at all in breaking of it.* But he goes on in his Book, and that is by way of Answer to an Objection, *That if there be no Injury, yet there may be Inconvenience, if the Headless Multitude should shake off the Toke.* But, says he, *I would fain know how the Multitude comes to be Headless:* and there he gives you many instances in Story, and from Foreign Nations he comes home to the *English*, and tells you how all Rebellions in later Ages have been headed: and tells you, *the Parliament is the Head, or the Nobility and Gentry that compose it; and when the King fails in his Duty, the People may call it. The Multitude therefore is never Headless, but they either find or create an Head;* so that here is a plain and an avowed Principle of Rebellion established upon the strongest Reason he has to back it.

Gentlemen, This with the other Evidence that has been given, will be sufficient to prove his compassing the Death of the King. You see the affirmations he makes; *When Kings do break their Trust, they may be called to account by the People.* This is the Doctrine he broaches and argues for: He says in his Book in another part, *That the Calling and Dissolving of Parliaments is not in the Kings Power.* Gentlemen, you all know how many Parliaments the King hath called and dissolved; if it be not in his power, he hath done that that was not in his power, and so contrary to his Trust. Gentlemen, at the entrance into this Conspiracy they were under an apprehension that their Liberties were invaded, as you hear in the Evidence from my Lord Howard, that they were just making the Insurrection upon that tumultuous Opposition of Electing of Sheriffs in London. They enter into a Consultation to raise Arms against the King; and it is proved by my Lord Howard, that the Prisoner at the Bar was one. Gentlemen, Words spoken upon a supposition will be High Treason, as was held in King James's time, in the Case of Collins in Rolls Reports, *The King being excommunicate may be deposed and murdered*, without affirming he was excommunicated; and this was enough to convict him of High Treason. Now according to that Case, to say *the King having broken his Trust may be deposed by his People* would be High Treason, but here he does as good as affirm the King had broke his Trust; when every one sees the King hath dissolved Parliaments; this reduces it to an Affirmation. And though this Book be not brought to that Council to be perused, and there debated, yet it will be another, and more than two Witnesses against the Prisoner: For I would ask any man, suppose a man was in a Room, and there were two men, and he talks with both apart, and he comes to one and endeavours to persuade him that it is lawful to rise in Arms against the King, if so be he break his Trust; and he should

go to another man, and tell him the King hath broken his Trust, and we must seek some way to redress our selves, and persuade the People to rise; these two Witnesses do so tack this Treason together, that they will be two Witnesses to prove him guilty of High Treason. And you have heard one Witness prove it positively to you, That he consulted to rise in Arms against the King, and here is his own Book says, it is lawful for a man to rise in Arms against the King, if he break his trust; and in effect he hath said, the King hath broken his Trust: Therefore this will be a sufficient demonstration what the Imagination of the Heart of this man was, that it was nothing but the Destruction of the King and the Government, and indeed of all Governments. There can be no such thing as Government, if the People shall be Judge in the case: For what so uncertain as the heady and giddy Multitude? Gentlemen, I think this will be a sufficient Evidence of his Consulting the Death of the King. You have here the Prisoner at the Bar that is very deep in it. Indeed some men may by passion be transported into such an Offence, and though the Offence be never the less, whatever the motives are, yet in some it is less dangerous; for those that venture upon passion, to raise Commotions and Rebellion, are not always so much upon their Guard, but that they may make some false steps to intrap themselves. But this Gentleman proceeds upon a surer foundation, it is his Reason, it is his Principle, it is the guide of all his Actions, it is that by which he leads and directs the steady course of his life. A man convinced of these Principles, and that walks accordingly, what won't he do to accomplish his designs? How wary will he be in all his Actions? Still reasoning with himself which way to bring it most securely about. Gentlemen, this is the more dangerous Conspiracy in this man, by how much the more it is rooted in him: and how deep it is; you hear, when a man shall write as his Principle, that it is lawful to depose Kings, they breaking their Trust, and that the Revolt of the whole Nation can not be called Rebellion. It will be a very sad case when people act this according to their Consciences, and do all this for the good of the People, as they would have it thought; but this is the Principle of this man. Gentlemen, we think we have plainly made it out to you, and proved it sufficiently, that it was the imagination of his heart to destroy the King, and made sufficient proof of High Treason.

Col. Sidney. Give me leave, my Lord, to say a very few words, I desire Mr. Solicitor would not think it his Duty to take away mens lives any how: First, We have had a long story. —

L. C. J. Nay, Mr. Sidney, we must not have vying and revying, I asked you before what you had to say; the course of Evidence is, after the Kings Counsel have concluded, we never admit the Prisoner to say any thing.

Col. Sidney. My Lord, It was a wise man said, there never could be too much delay in the life of a man: I know the Kings Counsel may conclude, if they please. Mr. Solicitor, I would not have him think that it is enough by one way or another to bring a man to death: My Lord, This matter of Sir Henry Vane is utterly misrepresented. —

L. C. J. I must tell you, Gentlemen of the Jury, that what the Prisoner says that is not proved, and what the Kings Counsel have said, of which there is no proof to make it out, must not be taken into any consideration.

Col. Sidney. Then my Lord here is a place or two in Old Hales, [turning over my Lord Hales Book] for the Overt Act of one Treason, not being an Overt Act of another, your Lordship knows Coke and Hales were both against it, [he reads] *Compassing by bare words is not an Overt Act, Conspiring to Levy War is no Overt Act.*

Mr. Sol. Gen. I desire but one word more for my own sake as well as the Prisoners, and that is, that if I have said any thing that is not Law, or misrepeated, or misapplied the Evidence which hath been given, I do make it my humble request to your Lordship to rectifie those mistakes, as well in point of Fact as point of Law; for God forbid the Prisoner should suffer by any mistake.

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L. C. J.

L. C. J. Gentlemen, The Evidence has been long, and it is a Cause of great concernment, and it is far from the thoughts of the King, or from the thoughts or desire of any of his Judges here to be instrumental to take away the life of any man, that by Law his Life ought not to be taken away. For I had rather many Guilty men should escape, than one innocent man suffer. The Question is, whether upon all the Evidence you have heard against the Prisoner, and the Evidence on his behalf, there is Evidence sufficient to Convict the Prisoner of the High Treason he stands charged with. And as you must not be moved by the denial of the Prisoner further than as it is backed with proof, so you are not to be inveigled by any insinuations made against the Prisoner at the Bar, further or otherwise than as the proof is made out to you. But it is usual, and it is a duty incumbent on the King's Council to urge against all such Criminals, whatsoever they observe in the Evidence against them, and likewise to endeavour to give answers to the Objections that are made on their behalf. And therefore, since we have been kept so long in this Cause, it won't be amiss for me (and my Brothers, as they shall think fit,) to help your memory in the fact, and discharge that Duty that is incumbent upon the Court as to the points of Law. This Indictment is for High Treason, and is grounded upon the Statute of 25 *E. 3.* By which Statute the compassing and imagining the Death of the King, and declaring the same by an Overt Act is made High Treason. The reason of that Law was, because at Common Law there was great doubt what was Treason; wherefore to reduce that High Crime to a certainty, was that Law made, that those that were Guilty might know what to expect. And there are several Acts of Parliament made between the time of *Edward* the Third, and that of 1 *M.* But by that Statute, all Treasons that are not enumerated by, after Acts of Parliament remain, as they were declared by that Statute of 25 *E. 3.* And so are Challenges and other matters insisted upon by the Prisoner, lest as they were at the time of that Act: I am also to tell you that in point of Law, it is not only the Opinion of us here, but the Opinion of them that sat before us, and the Opinion of all the Judges of *England*, and within the memory of many of you who are here, That though there be two Witnesses required to prove a man Guilty of High Treason, yet it is not necessary there should be two Witnesses to the same thing at one time. But if two Witnesses prove two several Facts, that have a tendency to the same Treason, they are two Witnesses sufficient to convict any man of High Treason. In the Case of my Lord *Stafford* in Parliament, all the Judges assisting, it is notoriously known, That one Witness to a Conspiracy in *England*, and another to a Conspiracy in *France*, were held two Witnesses sufficient to convict him of High Treason. In the next place, I am to tell you, that though some Judges have been of opinion that words of themselves were not an Overt Act; but my Lord *Hales*, nor my Lord *Coke*, nor any other of the Sages of the Law, ever questioned but that a Letter would be an Overt Act, sufficient to prove a man Guilty of High Treason. For *scribere est agere*, Mr. *Sidney* says, The King is a Politick Person; but you must destroy him in his natural capacity, or it is not Treason; but I must tell, if any man compass to Imprison the King, it is High Treason; so was the Case of my Lord *Cobham*, and my Lord *Coke*. When he says, if a man do attempt to make the King do any thing by force and compulsion, otherwise than he ought to do, that it is High Treason within that Act of 25 *E. 3.* But if it were an Indictment only for the Levying of War, there must be an actual War Levied; but this is an Indictment for compassing the Death of the King; and the other Treason, mentioned in that Act of Parliament, for the Levying War, may be given in Evidence to prove the Conspiracy the Kings Death; For it is rightly told you by the Kings Council, That the imagination of a mans heart is not to be discerned; but if I declare such my imagination by an Overt Act, which Overt Act does naturally Evince, that the King must be Deposed, Destroyed, Imprisoned, or the like, it will be sufficient Evidence of Treason within that Act. In

In the next place, having told you what the Law is; for, Gentlemen, 'tis our Duty upon our Oaths, to declare the Law to you, and you are bound to receive our Declaration of the Law; and upon this Declaration, to inquire whether there be a Fact sufficiently proved, to find the Prisoner guilty of the High Treason of which he stands indicted: And for that, I must tell you, what ever happens to be hearsay from others, it is not to be applied immediately to the Prisoner; but however, those matters that are remote at first may serve for this purpose, to prove there was generally a Conspiracy to destroy the King and Government: And for that matter, you all remember it was the constant Rule and Method observed about the Popish Plot, first to produce the Evidence of the Plot in general: This was done in that famous Case of my Lord *Stafford* in Parliament. Gentlemen, I am also to tell you, this alone does not at all affect the Prisoner at the Bar, but it is made use of as a Circumstance to support the Credibility of the Witnesses: and is thus far applicable to the business before you, that 'tis plain, by persons that don't touch the Prisoner at the Bar, (and I am sorry any man makes a doubt of it at this time of day) that there was a Conspiracy to kill the King: for after so full a proof in this place, and in others, and the Execution and Confession of several of the Offenders, I am surpris'd to observe that the Prisoner at the Bar, and some others present, seem not to believe it.

But, Gentlemen, you hear the first Witness; I speak of *West*; he tells you he had the honour to be acquainted with Mr. *Sidney*, and that he had discourse with *Walcor*, a person Convicted and Executed for this horrid Conspiracy. Why, says he, he told me at my Chamber, That they were not only the persons concerned, but that there were other persons of great Quality that had their Meetings for the carrying on the business in other places. And *Ferguson*, that was the Ring leader in this Conspiracy, told him there was a design of a general Insurrection; it was once laid down, but it is now taken up again. There are other Councillors of great importance; and he names among the rest, the Prisoner at the Bar. Mr. *West* goes a little further, and he tells you this: says he, He did not only tell me so, but that there was a design to conciliate a Correspondence with some persons in *Scotland*, and they were to do it under the Cant of having business in *Carolina*. There is Mr. *Keeling*, he tells you too, there was a Design for a general and publick Insurrection; That he was present with the *Goodenoughs*, one and t'other, and that they had taken upon them to divide, and did divide the City into such and such districts: And what was the business? It was, that there might be a general Insurrection; might be an Insurrection, not only to Destroy the King and the Duke, but to Destroy all the Kings Loyal Subjects; and in taking away there Lives, to take away the Life of Monarchy it self, and to Subvert the Religion Established by Law. Then comes in Collonel *Romsey*, and he gives you an Account that he had heard of such things in Mr. *West's* Chamber; and tells you he had received such Intelligence. And all these give you an Account, that there was such a Design to kill the King: And this is the Substance of the general Evidence produced to prove the Conspiracy. Then to make this matter come home to the Prisoner at the Bar, first my Lord *Howard* gives you an Account, and does directly Swear, That about the middle or latter end of *January* last, he happened to meet with Collonel *Sidney*, the Prisoner at the Bar, and the Duke of *Monmouth* (they were the Persons first began to have Discourse about this matter) and how they met with a disappointment; the thing had slept a great while, and that it was fit it should be revived again; and that Persons of Quality were mentioned, who were to have an immediat care in the carrying on of the business, and that it should not be divulged to too many; accordingly there was my Lord *Russel*, my Lord of *Essex*, my Lord of *Salisbury*, and Mr. *Hambden* named. He tells you, the Prisoner at the Bar undertook for my Lord of *Essex*, and Mr. *Hambden*, and he tells you, the Duke of *Monmouth* undertook for my Lord *Russel*, and the rest; and that this was the Result of one Meeting:

Meeting: He goes yet further, That pursuant to this, it was communicated to those persons so to be engaged, and the Place and Time was appointed; the Place, Mr. *Hambdens* House; but is not so positive to the Time; but only to the Place and Persons. He says, all these Persons met, and he gives an account, that Mr. *Hambden* (because it was necessary for some persons to break silence) gave some short account of the design of their Meeting, and made some reflections upon the Mischiefs that attended the Government, and what apprehensions many people had upon the late Choice of Sheriffs, and that there had been a male Administration of publick Justice; That it was fit some means should be used to redress these Grievances. He can't tell you positively what this man or that man said there; but says, that all did unanimously consent to what was then debated about an Insurrection; and in order to it, they discoursed about the time when it should be, and that they thought fit it should be done suddenly, while mens Minds were wound up to that height, as they then were; and as the first Witness tells you, there was a Consideration, whether it should be at one place, or at several places together: He says, then it was taken into consideration, that this could not be carried on, but there must be Arms and Ammunition provided. The next step is about a necessary concern, the concern of Money, and therefore our Law calls Money *the Sinews of War*. My Lord *Howard* tells you, that the Duke of *Monmouth* proposed 25 or 30000*l.* that my Lord *Gray* was to advance 10000*l.* out of his own Estate: but then they thought to make their party more strong, by the assistance of a discontented people in *Scotland*, my Lord of *Argyle* and Sir *John Cockram*, and several other people there to joyn with them. That pursuant to this, all they after met at my Lord *Russels*, and the same Debate is reassumed; and among the rest, this particular thing of conciliating a Friendship with the *Scotch*; the *Campbels*, my Lord of *Argyle*, and my Lord *Melvin* were particularly mentioned. That Collonel *Sidney* took upon himself to find out a Messenger, but it was my Lord *Russels* part to write the Letter; one of the Messengers named to convey the same was *Aaron Smith*, he was known, says my Lord *Howard*, to some of us; and then we all agreed, that *Aaron Smith* was the most proper man: upon this they brake up that very time. Afterwards comes my Lord *Howard* to Collonel *Sidney* at some distance of time, and he comes to him, and shews him Threescore Guineys, and told him, he was going into the City, and that they were to be given to *Aaron Smith*. He tells you after this, That he had some other Discourse about a fortnight or three weeks after, with Collonel *Sidney*; and that Collonel *Sidney* did take notice that he had sent him, and that he had an account of him, as far as *Newcastle*. So that 'tis very plain, That it was not sudden and rash thoughts, it is a little more than according to the language we meet with in some Pamphlets of late, more than Heats and Stirs. Gentlemen, then I must tell you, here are Circumstances proved in pursuance of this Design, for Sir *Andrew Foster* informs you, how that Sir *John Cockram*, and the *Campbels*, and one *Monro*, as I take it, came to Town, and that he had discourse with some of them about their business of coming out of *Scotland*; and he says, they pretended it was about business of some Trade to *Carolina*, which does still corroborate the Evidence. He tells you likewise, That there being a noise of discovering the Plot, they begun to hide; Sir *John Cockram* began to hide and sculk from place to place; they came first with that Cant in their mouths, about *Carolina*; the Messenger *Atterbury* tells you, when they came to take these men, how they shuffled from place to place. So, Gentlemen, I must tell you, that if in case there be but one Witness to prove a direct Treason, and another Witness to a Circumstance that contributes to that Treason, that will make two Witnesses to prove the Treason: Because I would explain my Mind, not long ago all the Judges of *England* were commanded to meet together, and one that is the senior of the Kings Council was pleased to put this Case. If I buy a Knife of *J. S.* to kill the

the King, and it be proved by one Witness I bought a Knife for this purpose, and another comes and proves, I bought such a Knife of I. S. they are two Witnesses sufficient to prove a man Guilty of High Treason: and so it was held by all the Judges of England then present, in the presence of all the Kings Council. And therefore Mr. Sidney is mightily mistaken in the Law in case of Treason (except the Treason at the Bar) or in Treason for Clipping and Coining, one Witness is sufficient at this day. Now Gentlemen supposing all this should not be sufficient, here is a Libel, and it is a most Traiterous and Seditious Libel. If you believe, that that was Colonel Sidney's Book, writ by him, no man can doubt but it is a sufficient Evidence, that he is Guilty of Compassing and Imagining the Death of the King; and let us consider, what proof can be greater than what has been given of it. Mr. Sheppard, an intimate acquaintance of his, that has seen him write, he looks upon the hand, and says, he is extremely acquainted with the hand, and says he, I believe in my Conscience this Book is Colonel Sidney's hand. Gentlemen, do you expect Mr. Sidney would call a Witness to be by to see him write that Book.

In the next place, you have two Trades-men, *Coke* and *Cary*, and they tell you, one had seen him write once, the other had seen his hand-writing, and they both believe it his hand-writing, and they have good reason, for they have paid several sums of Money upon Notes which they took as well as this to be his hand-writing. Gentlemen, besides that, give me leave to tell you, here is another thing that makes it more plain. This very Book is found in Colonel Sidney's house, on the Table in his Study, where he used to write, by a Gentleman, against whom Col. Sidney can't make the least objection; and that there was that fairness offered by the Gentleman, *Pray Colonel put your Seal upon it, that you may see that no injury be done you*; but Mr. Sidney would not do it. Therefore he Seals them with his own Seal, and carries them to *White hall*, where they were broken open, and swears that those Papers were found in his Closet, whereof this was one. Another thing which I must take notice of to you in this Case, is, to mind you, how this Book contains all the Malice, and Revenge, and Treason, that Mankind can be guilty of; It fixes the sole Power in the Parliament and the People; so that he carries on the Design still, for their debates at their Meetings were to that purpose. And such Doctrines as these suit with their Debates; for there a general Insurrection was designed, and that was discoursed of in this Book, and encouraged: They must not give it an ill name: It must not be called a Rebellion, it being the general Act of the People. The King, it says, is responsible to them, the King is but their Trustee; that he had betrayed his Trust, he had misgoverned, and now he is to give it up, that they may be all Kings themselves. Gentlemen, I must tell you, I think I ought more than ordinarily to press this upon you, because I know, the misfortune of the late unhappy Rebellion, and the bringing the late Blessed King to the Scaffold, was first begun by such kind of Principles: They cried, He had betrayed the Trust that was delegated to him from the People. Gentlemen, in the next place, because he is afraid their Power alone won't do it, he endeavours to poison mens judgments, and the way he makes use of, he colours it with Religion, and quotes Scripture for it too; and you know how far that went in the late times; How we were for binding our Kings in Chains, and our Nobles in Fetters of Iron. Gentlemen, this is likewise made use of by him to stir up the People to Rebellion. Gentlemen, if in case the Prisoner did design the Deposing the King, the removing the King, and if in order thereunto he be guilty of Conspiring to Levy War; or as the Letter writ by my Lord *Russel*, if he was privy to it, these will be Evidences against him. So that 'tis not upon two, but 'tis upon greater Evidence than twenty two, if you believe this Book was writ by him. Next I must tell you, Gentlemen, upon I think a less Testimony, an Indictment was preferred against the late Lord *Russel*, and he was thereupon Convicted and Executed; of which they have brought the Record. These are the Evidences for the King.

For the Prisoner he hath made several Objections; As that there was no War Levied: For that, Gentlemen, at the beginning of the Cause, I told you, what I took the Law to be, and I take it to be so very plainly. But, Gentlemen, as to the credibility of my Lord *Howard*, he offers you several Circumstances. First, he offers you a Noble Lord, my Lord *Anglesey*, who says, That he attending my Lord of *Bedford* upon the misfortune of the Imprisonment of his Son; after he had done, my Lord *Howard* came to second that part of a Christians Office, which he had performed, and told him, he had a very good Son, and he knew no harm of him; and as to the Plot, he knew nothing of it. Another Noble Lord, my Lord *Clare* tells you, that he had some Discourse with my Lord *Howard*, and he said, that if he were accused, he thought they would but tell *Noses* and his business was done. Then Mr. *Philip Howard*, he tells you, how he was not so intimate with him as others, but he often came to his Brothers; and that he should say he knew nothing of a Plot, nor did he believe any; but at the same time, he said, he believed there was a Sham Plot: and then he pressed him about the business of the Address; but that now my Lord of *Essex* was out of Town, and so it went off. Another thing Mr. *Sidney* took notice of, says he, 'tis an Act of Revenge in my Lord *Howard*, for he owes him a Debt, that he does (besides by his Allegation) does not appear.

Col. *Sidney*. My Lord, he hath confessed it.

L. C. J. Admit it; yet in case Col. *Sidney* should be Convicted of this Treason, the Debt accrues to the King, and he can't be a Farthing the better for it. But how does it look like Revenge? I find my Lord *Howard*, when he speaks of Col. *Sidney*, says, he was more beholding to him than any body, and was more sorry for him; so says my Lord *Clare*. Gentlemen, you have it likewise offered, that he came to Colonel *Sidney's* house, and there he was desirous to have the Plate and Goods removed to his house, and that he would assist them with his Coach and Coachman to carry them thither; and did affirm, that he knew nothing of the Plot; and did not believe Col. *Sidney* knew any thing: and this is likewise proved by a couple of Maid Servants, as well as the French man. You have likewise something to the same purpose said by my Lord *Paget*, and this is offered to take off the Credibility of my Lord *Howard*. Do you believe, because my Lord *Howard* did not tell them, I am in a Conspiracy to kill the King; therefore he knew nothing of it; he knew these Persons were Men of Honour, and would not be concerned in any such thing. But do you think, because a man goes and denies his being in a Plot, therefore he was not in it: Nay, it seems so far from being an Evidence of his Innocence, that 'tis an Evidence of his Guilt. What should provoke a Man to discourse after this manner, if he had not apprehensions of Guilt within himself? This is the Testimony offered against my Lord *Howard*, in disparagement of his Evidence. Ay, but further it's objected, he is in expectation of a Pardon: And he did say, he thought he should not have the Kings Pardon till such time as the drudgery of Swearing was over. Why, Gentlemen, I take notice, before this Discourse happened, he swore the same thing at my Lord *Ruffels* Tryal. And I must tell you, though it is the Duty of every man to discover all Treasons; yet I tell you, for a man to come and swear himself over and over guilty, in the face of a Court of Justice, may seem irksome, and provoke a man to give it such an Epithet. 'Tis therefore for his Credit, that he is an unwilling Witness. But Gentlemen, consider, if these things should have been allowed to take away the Credibility of a Witness, what would have become of the Testimonies that have been given of late days? What would become of the Evidence of all those that have been so profligate in their Lives? Would you have the Kings Council to call none but men, that were not concerned in this Plot, to prove that they were Plotting? Ay, but Gentlemen, it is further objected, This Hand looks like an old Hand, and it may not be the Prisoners hand, but be Counterfeited; and for that there is a Gentleman, who tells you what

what a dexterous man he is. He says, he believes he could Counterfeit any Hand in half an hour; 'tis an ugly temptation, but I hope he hath more Honour than to make use of that Art, he so much glories in. But what time could there be for the Counterfeiting of this Book? Can you imagine that Sir *Philip Lloyd* through the Bag Sealed up did it? Or, who else can you imagine should, or, does the Prisoner pretend, did write this Book? So that as on one side, God forbid, but we should be careful of mens Lives, so on the other side, God forbid, that Flourishes and Varnish should come to indanger the Life of the King, and the Destruction of the Government. But, Gentlemen, we are not to anticipate you in point of Fact, I have according to my memory recapitulated the matters given in Evidence. It remains purely in you now, whether you do believe upon the whole matter, that the Prisoner is Guilty of the High Treason, whereof he is Indicted.

Mr. Just. *Withins*. Gentlemen, 'Tis fit you should have our Opinions; in all the points of Law we concur with my Lord Chief Justice: Says Collonel *Sidney*, Here is a mighty Conspiracy, but there is nothing comes of it, who must we thank for that? None but the Almighty Providence? One of themselves was troubled in Conscience, and comes and discovers it; had not *Keyling* discovered it, God knows whether we might have been alive at this day.

Then the Jury withdrew, and in about half an hours time returned, and brought the Prisoner in Guilty. And the Lieutenant of the Tower took away his Prisoner.

Monday 26. of Novemb. 1683. Algernon Sidney Esquire was brought up to the Bar of the Court of Kings Bench, to receive his Sentence.

L. Ch. Just. Mr. Attorney, will you move any thing?

Mr. Att. Gen. My Lord, the Prisoner at the Bar is convicted of High Treason, I demand Judgment against him.

Clerk of Crown. Algernon Sidney, Hold up thy Hand (which he did.) Thou hast been indicted of High Treason, and thereupon arraigned, and thereunto pleaded Not guilty, and for thy Tryal put thy self upon God and the Country, which Country has found thee guilty, what canst thou say for thy self, why Judgment of Death should not be given against thee, and Execution awarded according to Law?

Col. Sidney. My Lord, I humbly conceive, I have had no Tryal, I was to be tryed by my Country, I do not find my Country in the Jury that did try me, there were some of them that were not Freeholders; I think, my Lord, there is neither Law nor President of any man that has been tryed by a Jury, upon an Indictment laid in a County, that were not Freeholders. So I do humbly conceive, that I have had no Tryal at all; and if I have had no Tryal, there can be no Judgment.

L. C. J. Mr. Sidney, you had the Opinion of the Court in that matter before, we were unanimous in it; for it was the Opinion of all the Judges of England, in the Case next proceeding yours, though that was a Case relating to Corporations; but they were of opinion, that by the Statute of *Q. Mary* the Tryal of Treason was put as it was at Common Law, and that there was no such Challenge at Common Law.

Col. Sidney. Under favour, my Lord, I presume in such a Case as this, of Life, and for what I know concerns every man in England, you will give me a day and Counsel to argue it.

L. C. J. 'Tis not in the power of the Court to do it.

Col. Sidney. My Lord, I desire the Indictment against me may be read.

L. C. J. To what purpose?

Col. Sidney. I have somewhat to say to it.

L. C. J. Well read the Indictment.

[Then the Clerk of the Crown read the Indictment.]

Col. Sidney. Pray Sir will you give me leave to see it, if it please you.

L. C. J. No, that we cannot do.

Col. Sidney. My Lord, there is one thing then that makes this absolutely void, it deprives the King of his Title, which is Treason by Law, *Defensor fidei*, there is no such thing there, if I heard it right.

L. C. J.

L. C. J. In that you would deprive the King of his life, that is in very full I think.
Col. Sidney. If no body would deprive the King, no more than I, he would be in no danger. Under favour these are things not to be over-ruled in point of Life so easily.

L. C. J. *Mr. Sidney.* We very well understand our Duty, we don't need to be told by you what our Duty is, we tell you nothing but what is Law, and if you make Objections that are immaterial, we must over-rule them. Don't think that we over-rule in your Case that we would not over-rule in all mens Cases in your Condition. The Treason is sufficiently laid.

Col. Sidney. My Lord, I conceive this too, that those words, that are said to be written in the Paper, that there is nothing of Treason in them; besides, that there was nothing at all proved of them, only by similitude of hands, which upon the Case I alledged to your Lordship, was not to be admitted in a Criminal Case. Now 'tis easie to call a thing proditorie; but yet let the nature of the thing be examined, I put my self upon it that there is no Treason in it.

L. C. J. There is not a Line in the Book scarce, but what is Treason.

Mr. J. Wythins. I believe, you don't believe it Treason.

L. C. J. That is the worst part of your Case; When men are riveted in Opinion, that Kings may be deposed, that they are accomptable to their People, that a general Insurrection is no Rebellion, and justifie it, 'tis high time, upon my word, to call them to account.

Col. Sidney. My Lord, the other day I had a Book, wherein I had King James's Speech, upon which all that is there, is grounded in his own Speech to the Parliament in 1603, and there is nothing in these Papers, which is called a Book, tho' it never appeared, for if it were true, it was only Papers found in a private mans Study, never shewed to any body; and *Mr. Attorney* takes this to bring it to a Crime, in order to some other Council, and this was to come out such a time, when the Insurrection brake out. My Lord, there is one Person I did not know where to find then, but every body knows where to find now, that is the Duke of *Monmouth*; if there had been any thing in Consultation, by this means to bring any thing about, he must have known of it, for it must be taken to be in Prosecution of those Designs of his; And if he will say there ever was any such thing, or knew any thing of it, I will acknowledge whatever you please.

L. C. J. That is over; you were Tried for this Fact: We must not send for the D. of *Monmouth*.

Col. Sid. I humbly think I ought, and desire to be heard upon it.

L. C. J. upon what? *Col. Sidney.* If you will call it a Tryal—

L. C. J. I do. The Law calls it so.

Mr. J. Wythins. We must not hear such Discourses after you have been Tried here, and the Jury have given their Verdict; as if you had not Justice done you.

Mr. J. Holloway. I think it was a very fair Tryal.

Col. Sidney. My Lord, I desire that you would hear my reasons why I should be brought to a new Tryal.

L. C. J. That can't be.

Col. Sidney. Be the Tryal what it will.

Cl. of Cr. Cryer, make an O yes. *Col. Sid.* Can't I be heard, my Lord?

L. C. J. Yes, if you will speak that which is proper; 'tis a strange thing; you seem to appeal as if you had some hardship upon you. I am sure, I can as well appeal as you. I am sure you had all the Favour shewed you that ever any Prisoner had. The Court heard you with patience, when you spake what was proper; but if you begin to arraign the Justice of the Nation, it concerns the Justice of the Nation to prevent you; we are bound by our Consciences and our Oaths to see Right done to you; and tho' we are Judges upon Earth, we are accountable to the Judge of Heaven and Earth, and we act according to our Consciences, tho' we don't act according to your Opinion.

Col.

Col. Sidney. My Lord, I say, in the first place I was brought to Westminster by Habeas Corpus, the 7th of this Month, granted the day before to be Arraigned, when yet no Bill was exhibited against me, and my Prosecutors could not know it would be found, unless they had a Correspondence with the Grand Jury, which under favour ought not to have been had. L. C. J. We know nothing of it: You had as good tell us of some bodies Ghost, as you did at the Trial.

Col. Sidney. I told you of two infamous Persons that had acted my Lord Russels Ghost. L. C. J. Go on, if you have anything else.

Col. Sidney. I prayed a Copy of the Indictment, making my Objections against it, and putting in a special Plea, which the Law, I humbly conceive, allowed me: the help of Council to frame it, was denied.

L. C. J. For the Copy of the Indictment, it was denied in the Case you cited. This favour showed you to day, was denied at any time to Sir Henry Vane, that is to have the Indictment read in Latin: On the other side, we refused your Plea. I told you, have a care of putting it in. If the Plea was such as Mr. Attorney did demur to it. I told you, you were answerable for the Consequences of it.

Mr. J. Wythins. We told you, you might put it in, but you must put it in at your Peril.

Col. Sidney. My Lord, I would have put it in. L. C. J. I did advertise you. If you put in a Plea, upon your Petil be it. I told you, we are bound by Law to give you that fair advertisement of the great danger you would fall under, if it were not a good Plea. Col. Sidney. My Lord, my Plea was that, could never hurt me. L. C. J. We do not know that.

Col. Sidney. I desire, my Lord, this, that it may be considered, That, being brought here to my Trial, I did desire a Copy of my Indictment, upon the Statute of 26 E. 3. which does allow it to all men in all Cases. L. C. J. I tell you the Law is otherwise, and told you so then, and tell you so now.

Col. Sidney. Your Lordship did not tell me, That was not a Law. L. C. J. Unless there be a Law particular for Col. Sidney. If you have any more to say.

Col. Sidney. I am probably informed, and, if your Lordship will give me time, shall be able to prove it, that the Jury was not summoned, as it ought to be: my Lord, if this Jury was not summoned by the Bailiffe, according to the ordinary way, but they were agreed upon by the Under-Sheriff, Graham, and Burton, I desire to know, whether that be a good Jury. L. C. J. We can take notice of nothing, but what is upon the Record: Here is a return by the Sheriff; if there had been any indirect means used with the Sheriff, or any else, you should have mentioned it, before they were Sworn.

Col. Sidney. Is there any thing in the world more irregular than that? L. C. J. I know nothing of it. That time is past.

Col. Sidney. Now, my Lord, All men are admitted on the Jury. L. C. J. Why, you did not like Gentlemen, and now you don't like those that you had: In plain English, if any Jury had found you Guilty, it had been the same thing. It had been a good Summons, if they had acquitted you.

Col. Sidney. When the Jury, thus composed, was Sworn, four Witnesses, of whom three were under the terror of Death for Treasons, were produced against me. And they confessed themselves guilty of Crimes, of which I had no knowledge, and told storys by hear-say. And your Lordship did promise in summing up the Evidence, that the Jury should be informed what did reach me, and what not, and I don't remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as possible I could be.

Col. Sidney. My Lord Howard being the only Witness, that said any thing against me; Papers, which were said to be found in my house, were produced as another Witness, and no other Testimony given concerning them, but that the hand was like unto mine. No man can say, I read them, or showed them to any man. None knew when they were written; These I showed up, they had been done many, and perhaps, 20 or 30 years. Yea, some passages were read out of them, without examining what went before and after,

when I desired the whole might be read, it was refused, unless I specified the passage, which I could not do, knowing not one word in them. When I alledged, that in criminal Cases similitude of Hands could not be taken for Evidence, proposed my Points of Law concerning constructive Treason, &c. And I did conceive, that no Court under the Parliament could be Judges of it, and did desire the Statute, which did so enact it, might be read, it could not be obtained: and I cited many Judgments in Parliament.

L.C.J. Mr. *Sidney*, if you arraign the Justice of the Nation so, as tho' we had denied you the methods of Justice, I must tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you less, I think we had done more our duty. What points of Law do you mean?

Col. Sidney. That of constructive Treason, my Lord. *L.C.J.* We do not go upon constructive Treason, 'tis plain Treason within an Act. *Col. Sidney*. Is writing an Act.

L.C.J. Yes, 'tis agreed. *Proclamation made for silence.*

Mr. Bamfield. Sir, I pray you to hear me one word as *Amicus Curia*, I humbly suppose that your Lordship will not give Judgment, if there be a material defect in the Indictment, as the Clerk did read it, he left out *Defensor Fides*, which is part of the Style of His Majesty. *L.C.J.* We have heard of it already, we thank you for your Friendship and are satisfied. Mr. *Sidney*, there remains nothing for the Court, but to discharge their Duty, in pronouncing that Judgment the Law requires to be pronounced against all persons convicted of High Treason; and, I must tell you, that tho' you seem to arraign the Justice of the Court, and the Proceeding—

Col. Sidney. I must appeal to God and the World. I am not heard.

L.C.J. Appeal to whom you will. I could wish with all my heart, instead of appealing to the World, as though you had received something extrem hard in your Case, that you would appeal to the great God of Heaven, and consider the Guilt you have contracted by the great Offence you have committed. I wish with all my heart, you would consider your condition; but if your own Iniquity will not provoke you, nothing I can say will prevail with you to do it; if the Kings general Pardon, in which you had so great a share of the Kings Mercy, will not, I could wish, that as a Gentleman and a Christian, you would consider under what particular Obligations you lie to that Gracious King that has done much more for you: I should have thought it would have wrought in you such a temper of mind, as to have turned the rest of your Life into a generous acknowledgment of his Bounty and Mercy, and not into a state of constant Combining and Writing, not only to destroy Him, but to subvert the Government; and I am sorry to see you so earnest in the justification of the Book, in which there is scarce a line, but what contains the rankest Treason, such as deposing the King: it not only incourages, but justifies all Rebellion. Mr. *Sidney*, you are a Gentleman of Quality, and need no Counsel from me. If I could give you any, my Charity to your immortal Soul would would provoke me to it. I pray God lessen this affliction to you. There remains nothing with the Court, but to pronounce that Judgment that is expected; and the Law requires; and therefore the Judgment of the Court is,

That you be carried hence to the place from whence you came, and from thence you shall be taken upon an hurdle to the place of Execution, where you shall be hanged by the Neck, and being alive cut down, your parts members shall be cut off and burnt before your face, your Head severed from your Body, and your Body divided into four Quarters, and they to be disposed at the Pleasure of the King. And the God of infinite Mercy have mercy upon your Soul.

Col. Sidney. Then, O God, O God, I beseech thee to sanctifie these sufferings unto me; and impute not my Blood to the Country, nor the City, through which I am to be drawn; let no inquisition be made for it, but if any, and the shedding of Blood that is innocent must be revenged, let the weight of it fall only upon those that maliciously persecute me for Righteousness sake. *L.C.J.* I pray God work in you a temper fit to go into the other world, for I see you are not fit for this.

Col. Sidney. My Lord, feel my Pulse (holding out his hand) and see if I am disordered, I bless God, I never was in better temper than I am now. Then the Lieutenant of the Tower carried him to his Prison.

F I N I S.

